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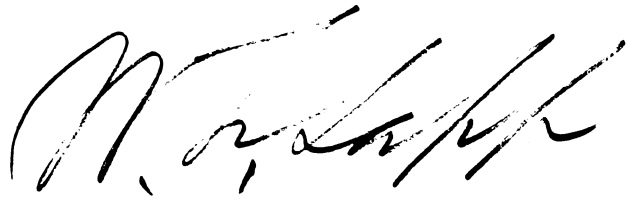

# INDEX

TO THE

# SCELLANEOUS DOCUMENTS

OF THE

# HOUSE OF REPRESENTATIVES

FOR THE

ECOND SESSION OF THE FORTY-FIFTH CONGRESS,

1877-'78.

IN 7 VOLUMES.

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VOLUME V.—No. 52.

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45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { MIS. DOC. No. 52.

# DIGEST OF ELECTION CASES.

# CASES

OF

# CONTESTED ELECTIONS

IN THE

## HOUSE OF REPRESENTATIVES,

FORTY-SECOND, FORTY-THIRD, AND FORTY-FOURTH CONGRESSES,

FROM

## 1871 TO 1876, INCLUSIVE.

COMPILED BY J. M. SMITH, CLERK TO THE COMMITTEE OF ELECTIONS, UNDER RESOLUTION OF THE HOUSE OF REPRESENTATIVES, MARCH 2, 1877.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1878.

By Mr. HARRIS, of Virginia:

*Resolved*, That there be printed for the use of the House the usual number of copies of the Digest of Contested-Election Cases, by the clerk of the Committee of Elections, together with a full index of the same, to be prepared by said clerk; for which, and for the necessary preparation and superintendence connected therewith, shall be paid by the Clerk of the House a per diem for the days actually employed therein, not exceeding that paid to clerks of committees during the session of Congress, the aggregate amount not to exceed $1,500, and not more than $500 shall be paid before the work is completed.

# DIGEST OF ELECTION CASES

## FORTY-SECOND CONGRESS, FIRST SESSION.

### COMMITTEE OF ELECTIONS.

G. W. McCrary, of Iowa.
Eugene Hale, of Maine,
L. P. Poland, of Vermont.
W. H. Upson, of Ohio.
Jere W. Hazleton, of Wisconsin.
M. C. Kerr, of Indiana.
C. N. Potter, of New York.
W. E. Arthur, of Kentucky.
C. R. Thomas, of North Carolina.

D. W. BARTLETT, *Clerk.*

## FORTY-SECOND CONGRESS, SECOND SESSION.

### COMMITTEE OF ELECTIONS.

G. W. McCrary, of Iowa.
Geo. F. Hoar, of Massachusetts.
B. T. Eames, of Rhode Island.
Jere W. Hazleton, of Wisconsin.
*A. E. Perry, of Ohio.
W. E. Arthur, of Kentucky.
M. M. Merrick, of Maryland.
E. Y. Rice, of Illinois.
C. R. Thomas, of North Carolina.

**FORTY-SECOND CONGRESS, FIRST SESSION.**

## TENNESSEE ELECTION.

This case involved the question of the validity of an election held for member of Congress in the month of November, and the construction of a State law relating to elections by the people to be held in the month of August.

It was held that the non-observance of a partially repealed State law did not vitiate an election held by common and universal assent of the governor and all other authorities of the State.

The House adopted the report, April 11, 1871.

Authorities referred to: Code of Tennessee, 1858, page 223; Acts of 1867-'68, page 69; Constitution of Tennessee, article 2, sec. 17.

March 22, 1871.—Mr. McCrary, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the credentials of the Tennessee delegation and the protest of Hon. W. F. Prosser against the right of the members of said delegation to seats in the House, have had the same under consideration and unanimously report as follows:*

The said members from Tennessee were chosen at an election held in that State on the 8th day of November, 1870. It is alleged that by the law of Tennessee, in force at the time of said election and ever since,

*Note.—Mr. Perry was excused from further service on the committee and Mr. Charles Foster, of Ohio, appointed in his place.

D. W. BARTLETT, *Clerk.*

Representatives in Congress are required to be chosen in August, and not in November, and that the month of August, 1871, is the time fixed by law for the election of Representatives from Tennessee in the present Congress. The legislation which bears upon the question is as follows:

1. The code of Tennessee, adopted in 1858, fixed the time for the election of Representatives in Congress "on the first Thursday in August in every second year, dating from August, 1833." (Code of 1858, p, 223.) This provision is found in chapter 2, article 3, of said code of 1858.

2. By an act approved February 28, 1868, it is provided that the election for Representatives in Congress shall be held "on the Tuesday next after the first Monday in November, 1868," and on the same day in each alternate year thereafter. (Acts of 1867-'68, p. 69.)

3. An act of the legislature, approved June 16, 1870, and which is entitled "An act to regulate the elective franchise in accordance with article 4, section 1, of the constitution of the State" is relied upon as having the effect of *repealing* the act of 1868, which fixed the time for the election in November and of *re-enacting* that of 1858, which fixed it in August. If it did repeal the one and re-enact the other, the election in question was void, as having been held on the wrong day.

To determine, therefore, the force and effect of this act of 1870 is to decide the question before us. This act contains in the first section provisions defining and regulating the elective franchise. Section 2 enumerates and gives the titles of three separate acts relating to the elective franchise, which it declares repealed; but it does not include in this list the act of 1868, fixing November as the time for holding the Congressional election. Then follows the following section:

> That title 6, chapter 2, articles 3, 4, 5, 6, 7, and 8 of the code of Tennessee, relating to elections by the people, be and the same are hereby re-enacted and revived, except as altered or repealed by this act.

It is admitted that the provision of the code of 1858, fixing August as the time for the Congressional election, is found in article 3 of chapter 2 of said code, referred to in the section quoted.

The language itself is broad enough, therefore, to amount to a re-enactment of everything contained in all the articles enumerated, including the provision in relation to the time of holding the election. But that such could not have been the intention of the legislature is evident from several considerations, which we will briefly state:

The title of the act declares its object to be "to regulate the elective franchise in accordance with article 4, section 1, of the constitution of the State." The provision of the constitution here referred to relates exclusively to *the qualifications of electors*. It is, then, clear that there is but one subject referred to in the title, and that is the regulation of the right to vote—the prescribing of the qualifications of voters. It is the opinion of the committee that the act should be construed so as to harmonize with its title, and that to ascertain the legislative intent (which is the thing to be sought) we should examine the act in connection with the title.

In this connection we quote the following provision of the constitution of Tennessee:

> No bill shall become a law which embraces more than one subject; that subject to be expressed in the title. All acts which repeal, revive, or amend former laws shall recite in their caption, or otherwise, the title or substance of the law repealed, revived, or amended. (Art. 2, sec. 17, Const. of Tenn.)

We do not in this connection discuss the question whether under this provision of the constitution so much of an act as is not embraced

within the subject set forth in its title should be held void. Of that hereafter. We are now seeking to ascertain the intent of the legislators who passed this act.

If the intent was to re-enact and give the force of law to *all* the provisions of articles, 3, 4, 5, 6, 7, and 8 of chapter 2 of the code, then the intention must have been to violate the constitution in several important particulars. If such was the intention, then the provision we have quoted, forbidding the introduction of more than one subject into an act, must have been intentionally violated, because the articles referred to embrace several distinct matters which are not embraced within the scope of the title to this act. Again, if the intention was to revive and re-enact all the articles named, it would amount, we think, to an intentional violation of the latter clause of the section of the constitution above quoted, which declares that "All acts which repeal, revive, or amend former laws shall recite in their caption or otherwise the title or substance of the law repealed, revived, or amended."

The section of the act of 1870 relied upon as reviving the provisions of the code of 1858 fixing the time for holding the election, does not, either in its caption or otherwise, "state the title or substance" of those provisions of the code. The act of 1870 names the chapter, but that chapter covers some thirteen pages and embraces a variety of subjects. It names the articles as being articles 3, 4, 5, 6, 7, and 8, of said chapter, but these articles cover some ten pages, and embrace a variety of provisions coming properly under the head of "elections by the people," but not all relating to the "elective franchise." It seems to us to have been the intent of the framers of this constitutional provision to prevent the re-enactment in this way, by wholesale, of repealed and obsolete statutes.

But again, if we hold that the intention of the legislature was to revive all the provisions of the chapter and articles of the code to which we have referred, we must also hold that there was a further intentional violation of the constitution in this. The constitution under which this legislature was acting, itself fixed the time for the election of governor of the State, of members of the general assembly, of judges and chancellors, and of county officers. The provisions of the code which it is claimed were revived by the act of 1870 also fixed times for the election of these same officers, and fixed them on days different from those fixed by the constitution. Therefore, if the legislature intended to revive all the provisions of the code embraced within the chapter and articles named, then they must have intended to violate the provisions of the new constitution, just referred to.

And, again, the act of 1870 expressly enumerates the statutes intended to be repealed, and does not mention the act of 1868, which fixes November as the time for holding the Congressional election. How easy and how natural to have included this act in the list of statutes repealed if the intention had been to repeal it. Is not its omission from this list a most significant fact, as bearing upon the question of intent? Would the legislature have left this act of 1868 out of the list of statutes expressly repealed, in order to reach its repeal by implication arising under a subsequent provision of doubtful construction and doubtful constitutionality? The committee think not.

It is therefore perfectly apparent that the legislature did not intend to revive *in toto* the provisions of the chapter and articles of the code referred to. The question, then, is, which, if any, of those provisions should be held revived? Unquestionably only such as relate to the

subject named in the caption or title of the act, viz, the regulation of "the elective franchise in accordance with article 4, section 1, of the constitution of the State." Thus construed, the committee hold that the act did not have the effect to repeal the act of 1868 and to revive that portion of the code of 1868 which relates to the time of holding of the election for members of Congress.

Your committee are not prepared to admit the correctness of the doctrine that the provisions of article 2, section 17, of the constitution of Tennessee are merely directory. While it may not be necessary to the determination of this case to pass upon this point, we deem it proper to say that we have grave doubts, to say the least, as to the validity of any provisions inserted in the body of an act not coming within the scope of the one subject set forth in the title. The language of the constitution is peculiar, and seems to be altogether prohibitory of that pernicious legislation which is the result of the power to combine in one bill various interests and objects. The language is, "no bill shall become a law," &c. This is much stronger than to say, "no bill shall contain more than one subject," &c. The former declares that no bill containing more than one subject "*shall become a law.*" The latter might not be held to go so far as this, and might with more propriety be held to be directory.

If, however, the question as to whether by the act of 1870 the time for holding the election in question was changed from August to November was one of doubt, we should feel bound to follow the construction given to it by all the authorities of the State of Tennessee whose duty it has been to construe it and to execute it. It is admitted that the governor and all other authorities in Tennessee having anything to do with the construction and enforcement of this act of 1870, have construed it as in nowise affecting the act of 1868, and by common and universal assent the election was held at the time fixed in the latter act. It is a well-established and most salutary rule, that where the proper authorities of the State government have given a construction to their own constitution or statutes, that construction will be followed by the Federal authorities. This rule is absolutely necessary to the harmonious working of our complex governments, State and National, and your committee are not disposed to be the first to depart from it. The committee recommend the adoption of the following resolution:

*Resolved*, That the election for members of Congress from the State of Tennessee, held on the 8th day of November, 1870, was held on the day fixed by law, and was not void by reason of having been held on the said day.

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## W. T. CLARKE.—THIRD CONGRESSIONAL DISTRICT OF TEXAS.

This case related to the certificate forwarded to the Clerk of the House of Representatives by the secretary of state of Texas. It was regarded as regular and authentic evidence of the result of the election, without prejudice to the right of any other person claiming to have been elected to contest his right to said seat.

The House adopted the report January 10, 1872. Yeas, 102; nays, 78; not voting, 58.

William T. Clarke was sworn in.

Authorities referred to: U. S. Statutes, 1857, chap. 56, page 1; Statute of Texas, 1870, chap. 78, sec. 23.

December 18, 1871.—Mr. Hoar, from the Committee of Elections, submitted the following report:

*The Committee of Elections, to whom was referred the certificate of the election of Hon. W. T. Clarke as a Representative from the third district of Texas, respectfully report:*

The only question before the committee is whether the document, a copy of which is annexed, marked A, entitles Mr. Clarke *prima facie* to a seat in the House, subject to the right of any other person hereafter, who may claim to be duly entitled thereto, to contest his right upon the merits. This is a simple question of law.

Statutes United States, 1867, ch. 56, § 1, requires the Clerk of the preceding House of Representatives to make, before the meeting of Congress, a roll of those persons "whose credentials show that they were regularly elected in accordance with the laws of their States, respectively, or the laws of the United States."

The certificate of Mr. Clarke, signed by the governor of Texas, and authenticated by the great seal of the State and the signature of the secretary, declares that Mr. Clarke was duly elected. In the absence of any express provisions of the State law, authorizing any officer to certify to the due election of members of Congress, it is presumed that, under the usages of the House, a certificate, under the great seal of a State, signed by its chief executive officer, would constitute sufficient credentials within the meaning of the statute of 1867.

But the committee are of opinion that the document submitted is the certificate required by the laws of Texas to be transmitted to the member-elect and to the Clerk of the House, and constitutes *prima facie* evidence of the election of Mr. Clarke. The statute of Texas of 1870, ch. 78, is a codification of the laws of that State touching elections. The provisions material to this question are annexed, marked B.

It will be seen that the laws of Texas, under which the election for members of the Forty-second Congress was held, provide that the judges of election at each poll or voting place (section 33) shall count the ballots, make a list of the names of persons and officers voted for, the number of votes for each, the number of ballots in the box, the number of ballots rejected, and the reasons therefor. All this is to be done "immediately after the close of the polls." This statement is to be made out in triplicate, signed and sworn to, one copy sent by mail to the secretary of state, another copy sent to the governor, and a third retained by the registrar.

The twenty-first section provides that if there be any disturbance, intimidation, or corruption, which prevent or tend to prevent a free and peaceable election, the judges or registrar shall make a statement, under oath, thereof, corroborated by the oaths of three citizens, and transmit the same to the governor. Section 34 requires the secretary of state to make a table containing an alphabetical list of the counties, with columns for the names of candidates and the number of votes; and on the sixteenth day after the close of the election, in the presence of the governor and the attorney-general, to open the returns and enter on the table the number of votes given for the candidates, respectively, and then put the returns back in the envelope, and seal and file them away.

The returning officers are to compile the statements first from all places where there has been a fair, free, and peaceable registration and election. Then if there has been received any statement from any

judge or registrar, of violence, intimidation, or corruption, as above stated, they are to see whether these, if proved, would affect the result. If they would not, they are to proceed to canvass and compile the returns from such voting-place as if no such statement had been made. If they would, the returning officers are to examine further testimony, with power to send for persons and papers, and, whenever such illegalities are shown to have taken place at any voting-place so as materially to affect the result, then the said returning officers shall not canvass or compile the statement of the votes at such poll or voting-place, but shall exclude it from their returns. The secretary may also employ clerks to compile the returns for a length of time not to exceed twenty days.

The foregoing provisions are all contained in a statute entitled "An act to provide for the mode and manner of conducting elections, making returns, and for the protection and purity of the ballot-box." They do not make, in terms, any distinction between different classes of officers or purport to be limited in their application to State officers exclusively, and they are the only provisions for forwarding returns to the secretary of state or for any canvass or compilation which shall ascertain the result. But section 23 provides that—

> As soon as possible after the expiration of the time of taking the returns of the election for Representatives in Congress, a certificate of the returns of the election for such Representatives shall be entered on record by the secretary of state, and signed by the governor, and a copy thereof, subscribed by said officers, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States.

The opponents of Mr. Clarke claim that this section requires copies of the original returns made by the local judges and registrar from their various polling-places, to be sent to the House and to the person elected, and that the provisions of sections 33 and 34 requiring a canvass and advertisement of the result by the three highest officers of State, have no application to members of Congress. On the other hand, Mr. Clarke claims that the provisions of those sections are applicable to members of Congress, that the certificate required by section 23 to be entered on record by the secretary of state, a copy of which is to be delivered to the member elected and forwarded to the Clerk of the House, is the certificate of the results of the election after the returns are tabulated and canvassed by the returning officers, and that the certificate he produces is such advertisement, and the regular and authentic evidence both of their action and his election.

And we are clearly of opinion that he is right; for these reasons:

1. It is highly improbable that the statute of Texas, which provides so carefully for a scrutiny of the proceedings in the case of all local officers, should have made no provision for the case of members of Congress.

2. It is not to be believed that it was the purpose of the legislature to require a mass of local returns to be transmitted to the Clerk of this House, as the only evidence of the election of their members, leaving him to foot them up and to determine all questions which might arise of their regularity and legal effect in making up the roll of members.

3. Section 23 clearly shows that the certificate is a certificate of the result, as ascertained by the returning officers, the same which is spoken of at the close of section 35, as "their returns." It is to be given "as soon as possible after the expiration of the time of making the returns of the election for Representatives in Congress." The only time limited is in sections 34 and 35, which require the returns to be opened on the

sixteenth day after the close of the election, and allow the secretary to employ clerks for thirty days thereafter in compiling returns.

4. The returns of votes for members of Congress and other officers are all to be sent to the secretary of state by the local judges in the same envelope, and unless sections 34 and 35 apply to them there is no provision of law for opening, counting, compiling, or preserving them by anybody.

5. Section 26 expressly provides that the provisions of this act (making no exceptions), shall apply to all officers whose election is not otherwise provided for.

It was then, in our judgment, the duty of the secretary to open the returns of the local officers, to make a table of the returns, and put the originals back again in the envelopes. This is to be done in the presence of the governor and attorney-general. A certificate of the returns is then to be entered, by the secretary, on record, signed by the governor, and a copy, signed by both secretary and governor, to be delivered "to the person so elected." The attorney-general is required to be present at the opening, but not to sign the returns. The document produced by Mr. Clarke, and referred by the House to the committee, is precisely such a document. It is signed by the governor and secretary, declares Mr. Clarke to be duly elected, states that it is a document on record in the secretary's office, and contains the tabulated statement of returns required by law. It is true it does not state that the attorney-general was present when the local returns were opened, and it is not required to state this by the law. The certificate of the returns is all that is to go on the record. It is true also that it shows that some local returns are rejected; but these are all rejected for reasons which, by the express provisions of law, it was made the duty of these officers to weigh and act upon, except in the case of Brazos County, which does not affect the result. It is true also that it does not appear that, in investigating the allegations of violence and intimidation, the State officers proceeded in the mode pointed out by the law; but it does not appear that they did not. It is not necessary that they should record or certify how they proceeded. The maxim *omnia rite acta esse presumuntur* is clearly applicable in a case of this sort. Few, if any, of the credentials of the members of the House show how the officers who certified them proceeded under the State laws in ascertaining the fact which he declares. It is enough for a *prima facie* case if the certificate came from the proper officer of the State, and clearly shows that the person claiming under it has been adjudged to be duly elected by the official or board on whom the law of the State has imposed the duty of ascertaining and declaring the result.

We therefore recommend the adoption of the following resolution:

*Resolved*, That W. T. Clarke has the *prima facie* right to a seat as Representative from the third congressional district of the State of Texas, and is entitled to take the oath of office as a member of this House, without prejudice to the right of any person claiming to have been elected thereto to contest his right to said seat upon the merits.

GEO. F. HOAR,
*For the Committee.*

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A.

GOVERNOR'S OFFICE,
*Austin, November* 15, 1871.

This is to certify that, on comparison of the returns of votes cast at an election held in the third Congressional district of the State of Texas, on the 3d, 4th, 5th, and 6th of Octo-

ber, A. D. 1871, provided for by joint resolution of the legislature of said State of Texas, approved May 2, 1871, I find that the Hon. W. T. Clarke was duly elected to represent the said Congressional district of the State of Texas in the Congress of the United States for the term commencing on the 4th day of March, A. D. 1871, and ending on March 3, 1873.

In giving this certificate I wish to call attention to the attached certified statement of the vote cast in the third district as returned, with grounds for rejecting certain returns. This is explanatory of my reasons for giving the foregoing certificate of election. According to my opinion, the numerous irregularities and instances of fraud and violence during the election in the third district, reported and proved to my satisfaction, would rather warrant a new election than the giving of a certificate to either party. I have felt constrained by my interpretation of the provisions of the State law on the subject of elections to reject many returns, and would have thought it more just to regard the election as a nullity; yet the act of Congress of May 31, 1870, section 22, seems to require that I should give a certificate of election to one of the candidates.

In testimony whereof I have caused the great seal of the State to be affixed, at the city of Austin, the date herein first above written.

[SEAL.] EDWARD J. DAVIS,
*Governor.*

By the governor:

J. E. OLDRIGHT,
*Acting Secretary of State.*

*Statement of the number of votes cast in the third district for candidates for Congress at an election held therein on the 3d, 4th, 5th, and 6th October, 1871.*

| Counties. | W. T. Clarke. | D. C. Giddings. | L. W. Stevenson. | Remarks. |
|---|---|---|---|---|
| Austin | 1,322 | 1,348 | 6 | |
| Bosque | 77 | 457 | ..... | Rejected. No official returns were received. |
| Brazoria | 850 | 386 | 30 | |
| Brazos | 1,050 | 1,233 | ..... | Rejected. The tickets were marked with numbers, contrary to provisions of section 19, chapter 78, general laws, fall session, 12th legislature, 1870, thereby operating as a scrutiny upon the votes and a restraint upon the freedom of voters. Further, that 49 persons of foreign birth had been permitted to register and vote without legal proof of naturalization. |
| Burleson | 478 | 829 | ..... | |
| Falls | 960 | 931 | 2 | |
| Fort Bend | 1,207 | 345 | ..... | |
| Freestone | 780 | 1,147 | ..... | Rejected. Acts of violence and intimidation and armed disturbance have been shown to have materially interfered with the purity and freedom of the election, thereby preventing such a number of the qualified electors therein from voting as would have changed the result of the election in that county if they had been permitted freely to vote. Further, that among those who voted at that election 163 persons had been permitted to register by proxy, contrary to law. |
| Galveston | 304 | 1,693 | 329 | |
| Grimes | 1,698 | 1,293 | ..... | |
| Harris | 2,033 | 1,621 | ..... | Six hundred and twenty-one voters reported as having been deterred from voting for W. T. Clarke, as desired by them, not counted, because, though those names appear on registration list, and though it is likely that some or all of them desired to vote as alleged, it is considered that under the act of Congress the application must come from the voters themselves, and this they have not made. |
| Hill | 455 | 649 | ..... | |
| Leon | 598 | 1,027 | 1 | |
| Limestone | 28 | 1,153 | 1 | Rejected. Reasons same as for Freestone, except as regards the 163 voters. |
| Madison | 161 | 429 | ..... | |
| Matagorda | 304 | 151 | 3 | |
| McLennan | 1,162 | 1,520 | ..... | |
| Milam | 299 | 976 | ..... | |
| Montgomery | 543 | 596 | ..... | |
| Navarro | 981 | 1,000 | ..... | |
| Robertson | 1,144 | 1,373 | 13 | |
| Walker | 848 | 720 | 18 | |

*Statement of the number of votes cast in the third district, &c.*—Continued.

| Counties. | W. T. Clarke. | D. C. Giddings. | L. W. Stevenson. | Remarks. |
|---|---|---|---|---|
| Washington..... | 2,535 | 110 | ..... | The votes received at the "white man's" place of voting—at what was called "the white man's ballot-boxes"—are rejected, because two voting-places are not allowed by law, and because that box was not presided over by even one lawful officer. Also because 458 aliens were registered on declaration of intention to become citizens, made by them in vacation, before a clerk, and not in term-time, before a competent court, of whom all or nearly all voted at what was called "the white man's box," and for other sufficient causes. The vote cast at the lawful box is alone counted. |
| Wharton..... | 525 | 85 | 7 | |
| Total ..... | 18,407 | 17,082 | 409 | |

DEPARTMENT OF STATE,
*Austin, November* 14, 1871.

I, J. E. Oldright, acting secretary of state for the State of Texas, hereby certify that the foregoing is a true copy taken from the records of this office.

Witness my hand and official seal at office in the city of Austin the date above written.

[L. S.] J. E. OLDRIGHT,
*Acting Secretary of State.*

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B.

SECTION 21. That in any county, city, town, road, or precinct in which, during the time of election, there shall be any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any place at or near any poll or voting-place, which riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences shall prevent or tend to prevent a fair, free, peaceable, and full vote of all the qualified electors of said county, city, town, road, or precinct, it shall be the duty of the judges of election, if such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences occur on the days of election, to make, in duplicate and under oath, a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, in preventing a fair, free, peaceable, and full election, and of the number of qualified electors deterred from voting by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which statement shall also be corroborated, under oath, by three respectable citizens, qualified electors, of the county. When such statement is made by a registrar, he shall forward one copy thereof, immediately after the close of the election, to the governor, and shall deposit the other with the clerk of the district court.

SECTION 23. That as soon as possible after the expiration of the time of making the returns of the election for Representatives in Congress, a certificate of the returns of the election for such Representatives shall be entered on record by the secretary of state and signed by the governor, and a copy thereof, subscribed by said officers, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Clerk thereof.

SECTION 24. That in case of vacancy, by death or otherwise, in the said office of Representative in Congress, between the general elections, it shall be the duty of the governor, by proclamation, to cause an election to be held, according to law, to fill the vacancy.

SECTION 26. That the provisions of this act, except as to the time of holding elections, shall apply to the election of all officers whose election is not otherwise provided for.

SECTION 33. That immediately upon the close of the polls, on the last day of election, the judges of election, at each poll or voting-place, shall proceed to count the ballots in the presence of the register and two citizens of the county, and make a list of all the names of the persons and officers voted for, the number of votes for each person, the number of ballots in the box, and the number of ballots rejected, and the reasons therefor. Said statement shall be made in triplicate, and each copy thereof shall be signed and sworn to by the judges of election and by the registrar. The registrar or board of election shall inclose in an envelope

of strong paper or cloth, securely sealed, one copy of such statement from each poll, and one copy of the list of persons voting at each poll, and one copy of any statements as to violence or disturbance, bribery or corruption, or other offenses specified in section twenty-nine of this act, if any there be, together with all memoranda and tally-lists used in making the count, and statement of the vote, and shall send such package by mail, properly and plainly addressed to the secretary of state. The registrar or board of election shall send a second copy of said statement to the governor of the State by the next most safe and speedy mode of conveyance, and shall retain the third copy in his own possession.

SECTION 34. The secretary of state shall make a table containing an alphabetical list of the counties, with columns for the names of candidates and the number of votes; and on the sixteenth day after the close of the election shall, in the presence of the governor and attorney-general, proceed to open the returns and enter on the table the number of votes given for the candidates, respectively, and then place the returns back in the envelope, seal it, indorse it, and carefully file it away in his office. A copy of the tabular returns made out by the secretary of state shall be printed in the official State journal. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

SECTION 35. That in compiling the returns the *returning officers* shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting-place, there shall be received the statement of any registrar or judge of election, in form as required in this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, peaceable, and full vote of all qualified electors entitled to vote at such poll or voting-place, such *returning officers* shall not canvass, count, or compile the statement of votes from such poll or voting-place, until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statements they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of the qualified electors thereat from voting, so as materially to change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the votes of such poll and voting-place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers.

If, after such examination, the returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from voting, so as to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes at such poll or voting-place, but shall exclude it from their returns. The secretary of state may employ such clerks as may be necessary to compile returns, for a length of time not to exceed thirty days, who shall be paid five dollars per day. The comptroller shall issue his warrant upon the treasury for the payment of such clerk-hire.

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## MINORITY REPORT.

Mr. Rice submitted the following minority report:

The undersigned, members of the Committee of Elections, to whom was referred a certain document claimed by W. T. Clarke to be a valid certificate of his election as a member of the Forty-second Congress from the State of Texas, for the third Congressional district in said State, respectfully submit—

That the committee have examined and considered the document so referred to them, and that we are unable to agree with the majority of the committee.

We find that said document embraces a certificate that W. T. Clarke was duly elected to represent the third Congressional district of the States of Texas in the Congress of the United States for the term com-

mencing on the 4th day of March, A. D. 1871, and ending on the 3d day of March, 1873, at an election held in said district on the 3d, 4th, 5th, and 6th days of October, 1871.

That said election was provided for by a joint resolution of the legislature of the State of Texas, which resolution was approved the 2d day of May, 1871; that said certificate is signed by the governor and secretary of the State of Texas; and that upon inspection it also appears that the same contains qualifications and recitals that go very far to lessen its character, if not to destroy its validity altogether as *prima facie* evidence of title to a seat in this House by W. T. Clarke.

The conclusion reached by Governor Davis, as appears from the closing lines of the certificate in question, was not owing so much to the fact that he believed Mr. Clarke, or any other candidate, to have been duly and legally elected, as to the fact that he was impressed with the belief that he was compelled by the 22d section of the act of Congress of May 3, 1870, to give a certificate of election to one of the candidates.

This certificate also refers to (and we hold adopts as a part thereof) a certified statement of the vote cast in the third district of the State of Texas for Representative in the Forty-second Congress for said district. A copy of said certificate of election, certified statement of the votes returned, and "remarks" showing the rejection of votes returned, and the reasons or grounds of rejection, is herewith submitted as a part of this report.

It appears by the vote returned, as shown by the certified statement referred to and verified by the governor, that if the whole number of votes polled for W. T. Clarke were *counted for him*, and the whole number polled for D. C. Giddings were *counted for him*, the majority for Mr. Giddings would be 730 votes.

Mr. Giddings insist that the evidence furnished by the documents or certificates referred to the committee shows that he was *in fact duly elected*, and that he is entitled to take his seat as a member of this House for the third district of the State of Texas. If the votes are to be counted for the respective candidates as they were returned to the secretary of state by the boards of election or registrars, then Mr. Giddings is clearly entitled to the seat for said district. But if, on the contrary, the governor of the State of Texas, after the votes for member of Congress for said district were returned to him, had lawful power and authority to reject all the votes which he states he did reject, then Mr. Clarke is entitled to be admitted to his seat, if there was in fact a lawful and valid election held in said third district of the State of Texas at the time stated in said certificate.

This brings us to the question, What is the legal effect of a certificate stating that the party to whom it is given was duly elected to an office, where the certificate recites or adopts by reference a state of facts which shows that the holder was not elected? Clearly the *facts must stand*, and the conclusions which the facts contradict *must fall*. If the facts show, as we think they do, that Mr. Giddings was elected, the statement that Mr. Clarke was duly elected cannot be accepted. The question arises as to the extent of the authority and power of the governor to reject the returns of the election as made to him or the secretary of state. This is to be ascertained by an examination of the election law of the State of Texas. Upon a careful examination of the same we fail to find, according to our views of correct interpretation, any such power.

It further appears that the whole vote of the county of Bosque was rejected for the reason, as it is said, that no "official returns were received." The vote in this county stood 77 for W. T. Clarke and 457 for

D. C. Giddings. While we are unable to account for the fact that the vote of the county of Bosque appears in an official tabular statement of the votes by counties in the third Congressional district, if there were no official returns from that county, still we are of the opinion that as a matter of law that the reason given for the rejection of this vote is insufficient.

It also appears that the whole vote of the county of Brazos was rejected. The vote in Brazos County stood for W. T. Clarke, 1,050; for D. C. Giddings, 1,223. The grounds for the rejection of this vote are that the tickets were "marked with numbers," in violation of the law of Texas, except as to some 49 persons of foreign birth who were permitted to vote without proof of naturalization.

In the counties of Limestone and Freestone the whole vote is rejected upon the grounds of violence, intimidation, and armed disturbance, to the extent of materially interfering with and affecting the result of the election, and the additional reason that, in the county of Freestone, 163 persons who voted had been permitted to register by proxy, contrary to law. In the county of Freestone Mr. Clarke received 780 votes, Mr. Giddings, 1,147. In Limestone Mr. Clarke received 28 votes, Mr. Giddings 1,153 votes.

In the county of Washington the votes received at what was called the "white man's ballot-box" were rejected for the reason as stated in said statement, under the head of "remarks," that two voting-places are not allowed by law, and because *that box* was not presided over by even one lawful officer. Also, because 458 aliens were registered on declaration of intention to become citizens, made by them in vacation, before a clerk, and not in term-time, before a competent court, &c. So that, of the votes counted and embraced in the tabulated statement, there appear 2,535 votes for W. T. Clarke, and 110 votes for D. C. Giddings. The number of votes rejected, as returned from the county of Washington, is not stated. Omitting from the computation all the votes marked rejected, it will appear that Mr. Clarke received 18,407, and that Mr. Giddings received 17,082, leaving a majority for Mr. Clarke of 1,325 votes.

It is the opinion of the minority of the committee that, if the governor of the State of Texas had lawful authority to supervise the election returns for member of Congress made to him and the secretary of state by the several election boards or registrars in the counties composing the third Congressional district of the State of Texas, and in his discretion to reject votes so returned, then, from the evidence before the committee, Mr. Clarke is, *prima facie*, entitled to a seat in this House. But the minority of the committee are clearly of the opinion that neither the governor nor any other State officer, nor any number of them acting in conjunction, possess any such power or authority under the law of Texas concerning election of members of Congress. This view, we submit, is supported by the language of the twenty-third section of chapter 78 of the statute laws of Texas, in relation to elections, which is as follows:

> That as soon as possible after the expiration of the time of making the returns of the election for Representatives in Congress, a certificate of the returns of the election for such Representatives shall be entered on record by the secretary of state and signed by the governor, and a copy thereof, subscribed by said officers, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Clerk thereof.

This section, it is believed, comprises the whole law of the State of Texas relating to the duties and powers of the governor and secretary

of state in regard to election returns for Representatives in Congress made by the proper election boards or registrars. When the secretary of state makes a certificate of the returns of the election for Representatives in Congress and enters the same upon record, signed by the governor, and a copy of this record is made and signed by the governor and secretary of state, and the same is delivered to the party elected as shown by such returns, and a like copy is sent to the Clerk of the House of Representatives, the whole power of the governor over the subject is exhausted, and any act done or attempted, with a design to change the result of the election, as shown by such returns, is unwarranted, illegal, and absolutely null and void. Separating, then, the illegal acts of the governor from the acts required to be done by the twenty-third section of the election law of Texas by the governor and secretary of state, we have left a certified statement from the record of the office of the secretary of state, signed by the secretary and verified by the governor of the State of Texas, of the returns made by the election boards in the several counties of the third district of Texas, *omitting those rejected*, because they were unofficial, to show that D. C. Giddings was elected by a large majority of votes.

Such a return is all that the twenty-third section requires or permits, and it cannot be invalidated by statements that have no legal effect, or the statement that Mr. Clarke was duly elected in the face of authenticated facts.

The minority are not unmindful of the fact that Mr. Clarke insists that sections 34 and 35 of the law of Texas, hereinbefore mentioned, justify, at least *prima facie*, the act of the governor in rejecting the returns of the election from the several counties and polling-places marked "rejected" in the tabular statement herewith submitted; but we are led to the conclusion, from an examination of the context of the act and a comparison of its various sections, that sections 34 and 35 apply in their general provisions to the returns of elections for officers of the State of Texas only, and not to members of the House of Representatives of the United States. Under said sections no certificate of election is required to be given to any one, but a copy of a tabulated statement of the returns is required to be printed in the official State journal. Rejected returns are not to be canvassed or compiled, but are to be excluded from the returns.

These provisions are altogether unlike the provisions of the twenty-third section of said act in relation to election returns for Representatives in the Congress of the United States. But if it were held that sections 34 and 35 apply to the returns of election for members of Congress, yet the governor has no power under them to make such inquiry unless the judges of election have furnished with their returns the affidavits of fraud, violence, &c., required by the twenty-first section. Those are an essential condition precedent to his assumption of jurisdiction to inquire into and reject returns for any such alleged cause. Moreover, it was admitted by both parties before the committee that no such affidavits had in fact been furnished or made by the judges. To the extent that votes were rejected by the governor of Texas on account of objections to individual voters, for the reason that they did not, in his opinion, possess the necessary qualifications to entitle them to vote, is an act, in the opinion of the minority, without even the color of law. This is a judicial act that can only be properly performed by the judges of the election, and then only in the presence of the party offering to vote, with full opportunity to be heard whenever his qualifications are called

in question, subject in case of contest upon the merits to be reviewed only by this House.

We feel that it is of the utmost importance that the confidence of the country in our republican institutions should be maintained, by giving effect to the choice of the people in the election of their Representatives, and that such choice, where it was made known, should not be defeated by illegal acts done under color of official authority.

For the reasons herein set forth, the undersigned, members of the Committee on Elections, are of the opinion that the evidence, consisting of the certificates with the statement of the votes attached thereto and duly authenticated, which were referred to the committee, show *prima facie* that D. C. Giddings is entitled to a seat as a Representative in Congress from the third district in the State of Texas.

We therefore recommend the adoption of the following resolution:

*Resolved*, That D. C. Giddings be admitted to a seat in this House as a Representative from the third Congressional district of the State of Texas, and that he be now qualified as such, without prejudice to the right of any other person to contest the same.

E. Y. RICE.
W. E. ARTHUR.
WM. M. MERRICK.

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GOVERNOR'S OFFICE, *Austin, November* 15, 1871.

This is to certify that, on comparison of the returns of votes cast at an election held in the third Congressional district of the State of Texas, on the 3d, 4th, 5th, and 6th of October, A. D. 1871, provided for by a joint resolution of the legislature of said State of Texas, approved May 2, 1871, I find that the Hon. W. T. Clarke was duly elected to represent the said Congressional district of the State of Texas in the Congress of the United States for the term commencing on the 4th day of March, A. D. 1871, and ending on March 3, 1873.

In giving this certificate I wish to call attention to the attached certified statement of the vote cast in the third district as returned, with grounds for rejecting certain returns. This is explanatory of my reasons for giving the foregoing certificate of election. According to my opinion the numerous irregularities and instances of fraud and violence during the election in the third district, reported and proved to my satisfaction, would rather warrant a new election than the giving of a certificate to either party. I have felt constrained by my interpretation of the provisions of the State law on the subject of elections to reject many returns, and would have thought it more just to regard the election as a nullity, yet the act of Congress of May 31, 1870, section 22, seems to require that I should give a certificate of election to one of the candidates.

In testimony whereof I have caused the great seal of the State to be affixed, at the city of Austin, the date herein first above written.

[SEAL.] EDWARD J. DAVIS,
*Governor.*

By the governor:
J. E. OLDRIGHT.
*Acting Secretary of State.*

*Statement of the number of votes cast in the third district for candidates for Congress, at an election held therein on the 3d, 4th, 5th, and 6th October,* 1871.

| Counties. | W. T. Clarke. | D. C. Giddings. | L. W. Stevenson. | Remarks. |
|---|---|---|---|---|
| Austin | 1,322 | 1,348 | 6 | |
| Bosque | 77 | 457 | ..... | Rejected. No official returns were received. |
| Brazoria | 850 | 386 | 30 | |
| Brazos | 1,050 | 1,233 | ..... | Rejected. The tickets were marked with numbers, contrary to provisions of section 19, chapter 78, general laws, fall session, 12th legislature, 1870, thereby operating as a scrutiny upon the votes and a restraint upon the freedom of voters. Further, that 49 persons of foreign birth had been permitted to register and vote without legal proof of naturalization. |
| Burleson | 478 | 829 | ..... | |
| Falls | 960 | 931 | 2 | |
| Fort Bend | 1,207 | 345 | ..... | |
| Freestone | 780 | 1,147 | ..... | Rejected. Acts of violence and intimidation and armed disturbance have been shown to have materially interfered with the purity and freedom of the election, thereby preventing such a number of the qualified electors therein from voting as would have changed the result of the election in that county if they had been permitted freely to vote. Further, that among those who voted at that election 163 persons had been permitted to register by proxy, contrary to law. |
| Galveston | 304 | 1,693 | 329 | |
| Grimes | 1,698 | 1,293 | ..... | |
| Harris | 2,033 | 1,621 | ..... | Six hundred and twenty-one voters reported as having been deterred from voting for W. T. Clarke, as desired by them, not counted, because, though those names appear on registration list, and though it is likely that some or all of them desired to vote as alleged, it is considered that under the act of Congress the application must come from the voters themselves, and this they have not made. |
| Hill | 455 | 649 | ..... | |
| Leon | 598 | 1,027 | 1 | |
| Limestone | 28 | 1,153 | 1 | Rejected. Reasons same as for Freestone, except as regards the 163 voters. |
| Madison | 161 | 429 | ..... | |
| Matagorda | 304 | 151 | 3 | |
| McLennan | 1,162 | 1,590 | ..... | |
| Milam | 299 | 976 | ..... | |
| Montgomery | 543 | 596 | ..... | |
| Navarro | 981 | 1,000 | ..... | |
| Robertson | 1,144 | 1,373 | 13 | |
| Walker | 848 | 720 | 18 | |
| Washington | 2,535 | 110 | ..... | The votes received at the "white man's" place of voting—at what was called the "white man's ballot-boxes"—are rejected, because two voting-places are not allowed by law, and because that box was not presided over by even one lawful officer. Also, because 456 aliens were registered on declaration of intention to become citizens, made by them in vacation, before a clerk, and not in term-time, before a competent court; of whom all, or nearly all, voted at what was called "the white man's box;" and for other sufficient causes. The vote cast at the lawful box is alone counted. |
| Wharton | 525 | 85 | 7 | |
| Total | 18,407 | 17,082 | 409 | |

DEPARTMENT OF STATE, *Austin, November* 14, 1871.

I, J. E. Oldright, acting secretary of state for the State of Texas, hereby certify that the foregoing is a true copy taken from the records of this office.

Witness my hand and official seal, at office in the city of Austin, the date above written.

J. E. OLDRIGHT,
*Acting Secretary of State.*

## BOLES VS. EDWARDS.—THIRD CONGRESSIONAL DISTRICT OF ARKANSAS.

Rejecting the application of the sitting member, John Edwards, for an extension of time to take testimony.

The House sustained the report.

Authorities referred to: Vallandigham *vs.* Campbell, Thirty-Fifth Congress; Carrigan *vs.* Thayer, Thirty-Eighth Congress.

December 20, 1871.—Mr. G. W. Hazleton, from the Committee of Elections, made the following report:

The Committee of Elections, to whom was referred the application of the respondent, John Edwards, for an extension of sixty days to take testimony herein from the time of the adoption of a resolution to that effect by the House, having had the same under consideration, unanimously reported against the application, for reasons which hereinafter appear.

At the organization of the Forty-Second Congress the name of neither of the parties to this contest was entered by the Clerk on the rolls of the House, and the question, which of the parties was entitled *prima facie* to the seat, came before the committee at the first session of the present Congress in April last.

After argument and consideration of the question, the committee resolved in favor of the respondent, and, their report being adopted by the House, the said respondent was thereupon, and on the 21st day of March, sworn in and took his seat.

On the 17th day of April thereafter the answer of respondent to the notice of contest was served on contestant. The law of 1851, section 22 provides that the testimony taken by the parties, or either of them, shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer, and that the same shall be taken within sixty days from the time of service of the answer, unless the House shall, in its discretion, allow supplementary evidence to be taken after the expiration of said sixty days.

The respondent introduced a resolution in the House on the 5th day of April last, thirteen days before his answer was served, and before he could well have known that the time allowed by law for taking testimony would be insufficient, asking that such time be extended sixty days beyond the limit fixed by law. This resolution was referred to the committee, but no action was taken on it. The application is now made by the respondent, which, if granted, extends the time of taking testimony sixty days from the adoption of the resolution by the House.

In his affidavit, upon which he predicates the application, the respondent alleges "that the contestant occupied the whole of the time allowed by law for taking testimony, and that he was compelled, in looking after his own interest in the case, to attend the taking of said testimony of the contestant, and has had no time or opportunity to take any testimony in his own behalf," and on this ground alone he rests his application.

The affidavits of the contestant, and of Joseph Brooks and James L. Hodges, per contra, show that the respondent was not present during the taking of contestant's testimony but once, and then only for a few minutes.

The law, moreover, is well settled that both of the parties may pro-

ceed with the taking of their testimony at the same time, before different officers.

Up to this time the sitting member has not taken any testimony whatever, nor does it appear that he has taken a single step in that direction. It is difficult to see upon what ground the House can grant the respondent's application, made under these circumstances.

To say nothing of the terms of the law already quoted, touching the extending of the time fixed, to allow *supplementary* evidence, which clearly relates to cases in which the applicant has taken some evidence—that is to say, has made some use of the time given him—the policy of the House has been adverse to granting extensions. Procrastination in these cases, diminishes the object of the investigation, and cheapens the value of the final decision. The law is intended to furnish ample opportunity for taking testimony. Parties should be held to a rigid rule of diligence under it, and no extension ought to be allowed where there is reason to believe that, had the applicant brought himself within such rule, there would have been no occasion for the application.

The case of Vallandigham *vs.* Campbell, in the Thirty-fifth Congress, and the case of Carrigan *vs.* Thayer, in the Thirty-eighth Congress, are referred to in support of the action of the committee in this case.

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## McKENZIE vs. BRAXTON.—SEVENTH CONGRESSIONAL DISTRICT OF VIRGINIA.

Allegations that imperfect ballots were counted erroneously for sitting member and contestant; that returns from voting places were not certified according to law, and cannot be counted or received, and that ballots numbered by the judges of election to correspond with the names of the voters on the poll-books should be rejected.

The committee unanimously report that Elliott M. Braxton was duly elected.

The House adopted the report January 18, 1872.

Authorities referred to: Cooley on the Constitutional Limitations, page 611; Attorney-General *vs.* Ely, 4 Wis., 430; People *vs.* Ferguson, 8 Cowen, 102; People *vs.* Cook, 14 Barbour, 259, 4 Selden, 67; People *vs.* Pease, 27 N. Y., 64; People *vs.* Seaman, 5 Denio, 409; People *vs.* Tisdale, 1 Doug., 65; People *vs.* Cicotte, 16 Mich., 283; Milk *vs.* Christie, 1 Hill, N. Y., 102; Bratton *vs.* Seymour, 4 Watts., Pa., 329; Franklin *vs.* Talmadge, 5 Johns., 48.

January 9, 1872.—Mr. McCrary, from the Committee of Elections, submitted the following report:

*The Committee of Elections have had under consideration the contested election case of Lewis McKenzie* vs. *Elliott M. Braxton, from the seventh congressional district of Virginia, and report as follows:*

The State board of canvassers, whose duty it was under the law of Virginia to canvass the vote cast at the election in question, certify that the vote stood as follows:

*Abstract of the number of votes polled for a member of Congress for the seventh congressional district of Virginia, at the election for State and county officers held on the 8th day of November, 1870, as per returns made by the clerks of the different counties, and forwarded by them to the secretary of the commonwealth and board of State canvassers at Richmond, Va.*

| Counties. | Names of persons voted for. | | | | Counties. | Names of persons voted for. | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Lewis McKenzie. | Elliot M. Braxton. | E. M. Braxton. | L. McKenzie. | | Lewis McKenzie. | Elliot M. Braxton. | E. M. Braxton. | L. McKenzie. |
| Alexandria County | 832 | 123 | ..... | .... | Stafford County | 162 | 725 | ..... | .... |
| Alexandria City | 1,276 | 1,012 | ..... | .... | Prince William Co. | 409 | 784 | ..... | .... |
| Fairfax County | 959 | 995 | ..... | .... | Louisa County | 1,302 | 1,144 | ..... | .... |
| Fauquier County | 1,050 | ..... | 1,929 | .... | Culpeper County | 1,062 | 973 | ..... | .... |
| Rappahannock Co. | 646 | 641 | ..... | .... | Spottsylvania Co | 860 | 1,161 | ..... | .... |
| Orange County | ..... | ..... | 848 | 935 | | | | | |
| Madison County | 506 | ..... | 877 | .... | Total | 10,259 | 9,065 | 3,654 | 935 |
| Loudoun County | 1,645 | 1,507 | ..... | .... | | | | | |

Paper "A."

PAUL R. HAMBRICK,
*United States Commissioner.*

RICHMOND, VA., *February* 23, 1871.

The board of canvassers decided that the votes set down in the above abstract as cast for E. M. Braxton should be counted for the sitting member, and that those set down in said abstract as cast for L. McKenzie should be counted for contestant, and they awarded the certificate to the sitting member. It will be seen that if this decision of the board was correct, and if no votes are rejected for any other cause, the majority of the sitting member is 1,525 votes.

But the contestant denies, not only the correctness of this decision, but the correctness of the abstract itself. He brings before us the original returns, and upon these and other evidence to be found in the record, he insists that a number of votes sufficiently large to change the result should be rejected.

The points raised by contestant and insisted upon before your committee are as follows:

1. That votes cast for E. M. Braxton, Elliot Braxton, C. M. Braxton, and Braxton were erroneously counted for the sitting member, and that votes cast for L. McKenzie were erroneously counted for contestant.

2. That the returns from certain voting places are not certified according to law, and cannot, therefore, be received and counted.

3. That at certain precincts the ballots of voters were numbered by the judges to correspond with the names of the voters on the poll-books, and that these ballots should be rejected.

The contestant concedes, and it is also very apparent from the record, that the evidence does not sustain the allegations of intimidation, violence, and fraud.

The sitting member denies that any votes were cast for C. M. Braxton as alleged by contestant. This is the only question of fact about which there is any controvesy, and however it may be determined, the case must turn upon the questions of law, which we will now proceed to consider.

## IMPERFECT BALLOTS.

The proof in this case clearly shows that the sitting member is known throughout the district as well by the name of E. M. Braxton, as by that

of Elliott M. Braxton; and that he is familiarly called Elliott Braxton; also, that there is no other person in the district, except the sitting member's infant son, who bears the name of Elliott M. Braxton, E. M. Braxton, or Elliott Braxton; and that the sitting member was regularly nominated for Congress by the democratic or conservative convention of the district; that his letter of acceptance was signed E. M. Braxton; that he canvassed the district and was the only person of the name of Braxton who was a candidate. These facts are not disputed by contestant; but we are asked to throw out a large number of votes, unquestionably cast in good faith for the sitting member, upon the purely technical ground that his name was printed upon the ballots E. M. Braxton, or Elliott Braxton, instead of Elliott M. Braxton. The grounds upon which the contestant makes this claim seem to be—

1. That we are not permitted to look beyond the ballot to ascertain the voter's intent; and

2. That the ballots in question cannot, upon their face, be held to have been intended for Elliott M. Braxton.

It may, and doubtless is, sometimes necessary to sacrifice justice in a particular case, in order to maintain an inflexible legal rule, but all just men must regret such necessity and avoid it when possible to do so. Your committee are clearly of the opinion that no such necessity exists here. So far from demanding such a sacrifice of right, the law as well as equity forbids it.

The contestant asks the House to apply the strict rule which has sometimes, though not always, been held to govern canvassing officers whose duty is purely ministerial, who have no discretionary powers, and can neither receive nor consider any evidence *aliunde* the ballots themselves. It is manifest that the House, with its large powers and wide discretion, should not be confined within any such narrow limits. The House possesses all the powers of a court having jurisdiction to try the question, who was elected. It is not even limited to the powers of a court of law merely, but, under the Constitution, clearly possesses the functions of a court of equity also. If, therefore, it were conceded that the canvassers erred in counting for the sitting member the votes cast for E. M. Braxton and Elliott Braxton, it would not determine the question as to what the House should do. What, then, is the true rule for the government of the House in determining what votes to count for the sitting member? Your committee are clearly of the opinion that where the ballots give the true initials of the candidate's name that is sufficient, and we, therefore, without hesitation, hold that the ballots given for E. M. Braxton must be counted for the sitting member.

Another objection, urged with much more zeal by contestant's counsel is, to the votes cast for Elliott Braxton, 235 in number. These, it is urged, cannot be counted for Elliott M. Braxton, the sitting member. Even if we were not permitted to look beyond the ballots themselves, we could have little doubt as to our duty; but, under some circumstances, and for certain purposes, evidence outside of the ballots themselves is admissible. It is true that no evidence *aliunde* can be received to *contradict* the ballot, nor to give it a meaning when it expresses no meaning of itself, but, if it be ambiguous or of doubtful import, the circumstances surrounding the election may be given in evidence to explain it, and to enable the House to get at the voter's intent. We see no reason why a ballot, ambiguous on its face, may not be construed in the light of surrounding circumstances, in the same manner and to the same extent as a written contract. The true rule, which should govern upon

the subject of the admissibility of extrinsic evidence to explain such a ballot, is thus laid down in Cooley on the Constitutional Limitations, page 611:

We think evidence of such facts as may be called the circumstances surrounding the election, such as who were the candidates brought forward by the nominating conventions; whether other persons of the same names resided in the district from which the officer was to be chosen; and, if so, whether they were eligible or had been named for the office; if the ballot was printed imperfectly, how it came to be so printed, and the like, is admissible for the purpose of showing that an imperfect ballot was meant for a particular candidate, unless the name is so different that to thus apply it would be to contradict the ballot itself; or unless the ballot is so defective that it fails to show any intention whatever, in which case it is not admissible.

To the same effect are the following decisions: Attorney-General *vs.* Ely (4 Wis., 430); People *vs.* Ferguson (8 Cowen, 102); People *vs.* Cook (14 Barbour, 259); People *vs.* Pease (27 N. Y., 64).

In People *vs.* Ferguson, *supra*, it was held that, on the trial of a contested election case before a jury, ballots cast for H. F. Yates should be counted for Henry F. Yates, if, under the circumstances, the jury were of the opinion that they were intended for him; and that to arrive at that intention it was competent to prove that he generally signed his name H. F. Yates; that he had before held the same office for which these votes were cast, and was then a candidate again; that the people generally would apply the abbreviation to him, and that no other person was known in the county to whom it would apply. This ruling was followed in People *vs.* Seaman (5 Denio, 409), and in People *vs.* Cook, *supra.* In Attorney-General *vs.* Ely the court went so far as to hold that ballots cast for "D. M. Carpenter," "M. D. Carpenter," "M. T. Carpenter," and "Carpenter," might be counted for Mathew H. Carpenter, upon proof, made to the satisfaction of the jury, that they were intended for him.

In an early case in Michigan (People *vs.* Tisdale, 1 Doug., 65), it was held that no extrinsic evidence was admissible in explanation or support of the ballot, and this ruling has been followed in that State in several later cases. The supreme court of that State, however, in its latest decision on the subject (People *vs.* Cicotte, 16 Mich., 283), through a majority of the judges, expresses the opinion that the doctrine laid down in People *vs.* Tisdale is erroneous, and it is adhered to upon the sole ground that it has been too long the law of that State to be overthrown, except by the legislature. The chief justice, in a masterly dissenting opinion, advocates the entire overthrow by the court of the erroneous and pernicious doctrine of the earlier cases. We quote from this dissenting opinion, as follows:

All rules of law which are applied to the expression, in constitutional form, of the popular will, should aim to give effect to the intention of the electors; and any arbitrary rule which is to have any other effect, without corresponding benefit, is a wrong, both to the parties who chance to be affected by it and to the public at large. The first are deprived of their offices, and the second of their choice of public servants.

The chief argument in favor of the rule of People *vs.* Tisdale is, that ballots cast for parties by their initials only are so uncertain that they cannot be applied without resort to extrinsic and doubtful evidence to ascertain the voter's intention, and therefore should be rejected. But nothing can be more fallacious. It frequently happens that a man is better known by the initials of his baptismal name than by the name fully expressed; simply because he is not in the habit of writing his name in full, or of being thus addressed in business transactions. I think it highly probable that that is the case with each of the parties before us.

In political conventions, or legislative bodies, no one deems it important to write the full name of a candidate for whom he is voting, and no one ever thinks of challenging the vote for uncertainty. Under the application of this rule to the present case, the curious spectacle will be exhibited of votes cast for E. V. Cicott and G. O. Williams being rejected because the courts cannot determine for whom they were intended, while not a single person in the county of Wayne has the slightest doubt that they were cast for Edward V. Cicott

and Gurdon O. Williams, the opposing candidates at this election. Thus the courts are required to close their eyes to what everybody else can see distinctly. The fallacy of the rule consists in its assuming that a certain form of ballot clearly expresses the voter's intention, while another form is so uncertain, that it is dangerous to attempt to arrive at the meaning by evidence. But, in fact, no ballot can identify with positive certainty the persons for whom it is cast; and notice must be taken of extrinsic circumstances in order to apply it. It is always possible that other persons may reside in the election district having the same names with some of the candidates; but neither the canvassers nor the courts ever assume that there is any difficulty in these cases, but they count the votes for the persons who have been put forward for the respective offices. And in some cases, where an element of uncertainty is introduced into the ballot unnecessarily, as by the addition of an erroneous designation, the courts resolve the difficulty by rejecting the erroneous addition, and counting the ballot for the person for whom it was evidently designed.

There is, then, no room for doubt that the rule laid down by Judge Cooley, and quoted above, is the true rule, having for its support both authority and reason. To reject it, and establish the doctrine contended for by contestant, would be to defeat in every such case as the one before us the undoubted will of the majority. And this injustice would not be compensated by the establishment of a rule which is in itself either salutary or important. The cases are numerous where an imperfect ballot, by the aid of extrinsic evidence, can be made clear and perfect. No harm can result from admitting such extrinsic evidence so long as it is only admitted to cure or explain such imperfections and ambiguities as could be cured if they occurred in the most solemn written instruments, and to this extent and no further would we carry it. Thus guarded and qualified, the rule is most salutary and most just.

Since, therefore, the testimony clearly shows that the votes cast for Elliott Braxton were intended for the sitting member, we deem it our duty to count them for him. We might, with great propriety, rest this ruling upon another and different ground. The doctrine is well settled that the law knows but one Christian name, and accordingly the courts have uniformly held that the omission of the middle name, or the initial thereof, is not a material or fatal omission. The following are among the authorities upon this point: People *vs.* Cook (14 Barb., 259, and same case, 4 Selden, 67), where this rule is applied to a contested-election case very much like the one before us; Milk *vs.* Christie (1 Hill, N. Y., 102); Bratton *vs.* Seymour (4 Watts, Pa., 329); Franklin *vs.* Talmadge (5 Johns., 84).

The sitting member might with safety have relied upon this doctrine and insisted that the ballots cast for Elliot Braxton designated Elliott M. Braxton with sufficient certainty. He has, however, gone further, and proved the facts necessary to show clearly that such designation was intended by the voters.

Contestant insists that the committee and the House ought to adopt and follow an opinion given in 1860 by the attorney-general of Virginia to the then governor of that State, and which it is insisted covers the question now under consideration. An examination of that opinion will show that the question decided by the attorney-general was not the same as that now before us. The questions in answer to which the opinion was given were as follows:

2d. The initial of the middle name, in the return of the electors by the commissioners, being erroneously given thus (S instead of T), or the omission of jr. or sen. at the end of the name, as the case may be, ought such return to be received and counted in favor of the particular elector?

3d. In the case of the Christian name of the elector being erroneously stated in the return—for example, Anthony instead of Andrew—should such returns be counted or excluded for that elector?

4th. In the case of the surname of the elector being erroneously stated in the return, should such returns be counted or excluded for that elector?

Where a *wrong* initial is given, the case is, of course, very different from one where the first name is correctly given and the middle initial omitted. And so if the Christian name is given as Anthony when it should have been Andrew, or where the surname is erroneously given. These are very different questions from the one before us, which is simply whether votes for E. M. Braxton and for Elliot Braxton shall be counted for Elliott M. Braxton. We leave out of view, for the present, votes cast for C. M. Braxton and for Braxton. The opinion of the attorney-general, then, does not cover this case.

But a further and still more conclusive answer to this position of contestant is found in the fact that the opinion of the attorney-general was given to an executive officer to guide him in the discharge of purely ministerial duties, and not intended to be a rule for the guidance of courts or legislative bodies in the exercise of their judicial functions. The opinion in question may, and possibly does, lay down the correct rule for the government of ministerial officers, whose powers are limited to a consideration of what appears upon the face of the returns themselves; but, as we have already seen, a very different rule applies when the parties in interest come before a body clothed with full power to pass upon their rights in the light not only of the returns themselves but of all competent evidence.

By reference to the brief of contestant, it will be seen that under the fifth and sixth counts of his notice of contest he claims the rejection of votes on account of irregularity in the proceedings of the officers of election, as follows:

| | Votes. |
|---|---|
| Precincts objected to because returns were not certified, and in which, if rejected, Braxton loses | 986 |
| Precincts objected to because of the numbering of ballots, and in which, if rejected, Braxton loses | 416 |

The latter item is not correct, even according to contestant's own showing. It appears from the notice of contest that the only precincts named therein under this head are Stafford's Store, Stafford Court-House, and Griffith's. In his argument, he has included Murkham precinct. The House has often held that the contestant must confine his proof to the allegations of his notice. The vote of the three precincts named in the notice and objected to because of the numbering of the ballots stood thus:

| | |
|---|---|
| For Braxton | 295 |
| For McKenzie | 97 |
| Majority for Braxton | 198 |

The contestant's statement being thus corrected, Braxton would lose, by the throwing out of numbered votes, 198, which, added to the 986 which he attacks because the returns are not certified, shows the total loss of Braxton under the fifth and sixth counts of the notice of contest, without reference to the merits of the objections raised by these counts, to be 1,184. The following are the only other votes objected to:

| | |
|---|---|
| Votes cast for C. M. Braxton | 130 |
| Votes for Braxton | 178 |
| Total | 308 |

If, however, these are rejected, as against the sitting member, it is conceded that the following must also be rejected as against the contestant, to wit:

| | |
|---|---|
| Votes cast for L. H. McKenzie | 17 |
| Votes cast for McKenzie | 76 |
| | 93 |

which reduces the number which Braxton would lose, upon contestant's theory, under this head, to 205 votes.

If, therefore, we were to allow the sitting member only the votes cast for E. M. Braxton and for Elliot Braxton, and reject all other votes objected to by contestant in his notice of contest, and insisted upon by him, the sitting member would still have a majority, as the following statement will show:

| | | |
|---|---|---|
| Braxton's majority, as shown by official canvass | | 1,525 |
| Deduct his majority at precincts where returns were not certified | 986 | |
| Deduct also his majorities at the three precincts at which it is alleged the ballots were numbered | 198 | |
| Deduct also votes for C. M. Braxton, and for "Braxton" less votes for L. H. McKenzie and "McKenzie" | 205 | |
| Making total deductions | | 1,389 |
| And leaving a majority for Braxton of | | 136 |

We have taken no notice of those precincts where the only objection raised is that the result of the vote was returned in figures only and not fully written out, because the point was not pressed in argument and is clearly not well taken.

The sitting member is, therefore, entitled to the seat, without going into the merits of the questions raised as to uncertified returns, numbered ballots, and ballots cast for C. M. Braxton and Braxton. Of course, the returns of an election must be certified by the proper officers. If not so certified, they prove nothing, and when offered in evidence, if objected to, they must be rejected. It was so held by the House in Barnes *vs.* Adams, in the last Congress. It does not, however, necessarily follow that the vote cast at such an election is lost or thrown away. An uncertified return does not *prove* what the vote was—that is all. The duly certified return is the best evidence, but if it be shown that this does not exist, we doubt not secondary evidence would be admissible to prove the actual state of the vote.

The failure of an officer, either by mistake or design, to certify a return, should not be allowed to nullify an election, or to change a result, if other and sufficient and satisfactory evidence is forthcoming to show what the vote actually was.

We are further of the opinion that the numbering of the ballots cast at an election, in the absence of a statute expressly so declaring, does not of itself invalidate an election, unless some injury is shown to have resulted to the party complaining. In Virginia, the law which was in force until near the time of this election, *required* the ballots to be numbered. A short time prior to the election in question, this provision was repealed. It seems that at a few precincts the officers of election were not advised of this repeal, and, consequently, numbered the ballots as they had been in the habit of doing before. Although it would be possible, from the numbering of the ballots, to ascertain how each person voted, it is not claimed in this case that this was done, or that the tickets were numbered for any such purpose, or for any improper or unlawful purpose whatever. We are, therefore, of the opinion that these votes should not be thrown out. The cases we have cited show that some of the courts of the country have gone so far as to lay down a rule under which the votes cast for Braxton, without designating his Christian name in any way, might be counted for the sitting member, upon proof that they were intended for him. Your committee have not, however, considered it necessary to decide that question.

We may add, also, that we have doubts as to whether any votes were

in fact cast for C. M. Braxton; but, as we have already said, this question is not at all material.

In the opinion of your committee, the contestant has altogether failed to make out a case, and we unanimously recommend the adoption of the following resolution:

*Resolved*, That Elliott M. Braxton was duly elected as Representative in Congress from the seventh district of Virginia, and he is entitled to retain his seat as such.

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## ELECTION FRAUDS IN ARKANSAS.

January 9, 1872.—Mr. Poland, from the Select Committee on the Insurrectionary States, submitted the following report:

*To the Senate and House of Representatives:*

At a meeting of "the Joint Select Committee to inquire into the condition of the late insurrectionary States, so far as regards the execution of the laws and the safety of the lives and property of the citizens of the United States," convened at their room in the Capitol, on the 22d of September, 1871, Messrs. Scott, Pool, and Blair were appointed a subcommittee to examine the witnesses then in attendance; which subcommittee organized on the 23d of September, 1871, and examined Edward Wheeler, of Arkansas. On the 25th of September, 1871, said subcommittee examined William G. Whipple, of Arkansas.

The testimony of these witnesses tends to impeach the official character and conduct of a member of the United States Senate from the State of Arkansas, and also to affect the right of a member of the House of Representatives from that State to retain his seat in the House. Other evidence of the same character was offered, and one of the gentlemen affected by this testimony claimed the right to bring witnesses before the committee to contradict or explain the same. The committee, however, upon consideration, decided that the subject-matter to which said testimony related did not come within the limits of the investigation they were directed to make, and therefore declined to prosecute the inquiry any further, discharging a witness who had been subpœnaed and was then awaiting an examination.

The joint select committee, pursuing what they deemed to be the proper parliamentary course, at a meeting on December 21, 1871, adopted the following resolution:

*Resolved*, That the committee report the testimony taken before the committee, affecting Senator Clayton and Mr. Edwards, a Representative from Arkansas, to the Senate and House of Representatives, with a recommendation that each House take such action as it may deem proper.

Agreeably to this resolution of said joint select committee, the undersigned, the chairman on the part of the Senate, and the chairman on the part of the House of Representatives, beg leave to submit the testimony hereto annexed, of Edward Wheeler and William G. Whipple, both of the State of Arkansas, said Wheeler and Whipple having been the only witnesses from that State who were examined by the committee, to the Senate and House of Representatives respectively, for such action as each House may deem advisable.

JOHN SCOTT,
*Chairman on the part of the Senate.*
LUKE P. POLAND,
*Chairman on the part of the House of Representatives.*

## TESTIMONY OF EDWARD WHEELER AND WILLIAM G. WHIPPLE, OF ARKANSAS.

WASHINGTON, D. C., *September* 23, 1871.

EDWARD WHEELER sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?—Answer. In Little Rock, Arkansas.

Q. What is your occupation?—A. I am connected with the Little Rock and Fort Smith Railroad, as one of the directors, representing the financial interests of certain parties.

The CHAIRMAN. As this witness has been called at your instance, General Blair, I will ask you, in pursuance of a practice that has been adopted by this committee, to conduct his preliminary examination.

By Mr. BLAIR:

Q. Were you a member of the grand jury of the United States court last spring?—A. Yes, sir; and its foreman.

Q. When was the session of that court held?—A. It commenced on the 10th of April last.

Q. Were any indictments found by that grand jury under the act of Congress known as the "enforcement act"?—A. Yes, sir; there were several found.

Q. Against whom? Who were indicted?—A. There were six or seven different parties indicted in Hot Springs County; judges, and clerks of elections, and registrars; also some six or seven in Clark County for frauds in elections; and Governor Clayton, of Pulaski County, was indicted.

Q. What was the offense for which Governor Clayton was indicted, and what was the evidence upon wh ch he was indicted?—A. The evidence was entirely documentary, being the returns in the office of the secretary of state. The witnesses were the ex-secretary of state, and the deputy secretary of state. They brought the returns, or a tabular statement of them sworn to, and laid it before the grand jury.

Q. Those returns were of what election, and in what counties?—A. In the election for members of the Forty-second Congress, and in the counties composing the third congressional district of the State of Arkansas. I do not now remember all of the counties by name. It is the district in which the county of Pulaski is embraced; our county is one of the counties of the third congressional district.

Q. What was the action of Governor Clayton that led to his indictment?—A. The first that I, or any member of the grand jury, knew of the matter was the bringing of the case to our attention by the district attorney; he came to me with a list of witnesses, three in number, which he wished to have subpœnaed. He said the case had been called to his notice, and he wanted it brought before the grand jury for examination. I subpœnaed the three witnesses: the ex-secretary of state, the deputy secretary of state, and General Edwards, the person to whom the certificate of election for Congress had been given by Governor Clayton. It was claimed that Governor Clayton had violated certain sections of the enforcement act in giving the certificate of election to General Edwards, when the returns, as exhibited to us by the secretary of state, showed that Judge Boles had been elected. General Edwards presented a copy of his certificate of election, and of the proclamation of the governor, stating that, according to the returns on file in the office of the secretary of state, General Edwards had been elected. But the returns, as exhibited to us, showed that Judge Boles was elected by some 2,130 votes, I think it was, on the full vote, counting the votes at both polls. There were allegations of fraud on both sides. But giving the governor the benefit of every doubt, the least majority for Judge Boles, that we could figure out, was some 800 or 900; I forget the exact figures. That was according to the returns shown to us; and upon that showing the indictment was found.

Q. Under what part of the act was the indictment found?—A. I think it was the twenty-second section of the enforcement act. And our State laws require the canvass of the returns to be made by the governor, assisted by the secretary of state; the governor is made the canvassing officer. The law was explained to us by the district attorney, and it was claimed that the governor had violated the twenty-second section, I think it was, of the enforcement act; the one providing that if any officer shall issue a fraudulent certificate of election to any party, he shall be amenable, &c.

Q. How was the grand jury composed?—A. How selected, do you mean?

Q. Well, yes.—A. It was selected by commissioners appointed by Judge Caldwell, the United States marshal being one, and the other two being from different parts of the State. The State at that time was all in one district, but it was afterwards divided. Judge Horner, of Helena, was one of the commissioners, and a man by the name of Pryor (I do not know him personally), from Washington, Hempstead County, was the other; they were both prominent men in the State.

Q. What was the name of the United States marshal?—A. General Catterson. I have not read the law carefully; but I think each of the commissioners was required to make out a list of names, fifty I believe, and from those names those for the grand jury were taken.

I was not on the original panel. I understand that my name was not on the list at all; at least I was not drawn as one of the grand jurors. But two days before the court convened, which was on Monday—on the Saturday before General Catterson summoned me as a member of the grand jury, to take the place of one of the jurors who had been excused by Judge Caldwell. That was the first intimation I had of being on the grand jury. On Monday morning the grand jury convened, and upon the organizaton of the court I was selected by Judge Dillon as the foreman of the grand jury. The judge called the attention of the grand jury especially to this recent law of Congress in relation to elections. We proceeded with our work, and one of the first cases brought before the jury was a violation of the election law in Hot Springs County, in regard to which there had been a great deal of contention in the senate. There was a contest in the senate between two claimants, both professing to be republicans, and it was alleged that one of them had been awarded the seat illegally. The one who got the seat was indicted, and that was this first indictment by the grand jury. Special attention was called to that case by the judge, through the district attorney; he wanted the case acted upon at that term of the court, while Judge Dillon was present, and we therefore acted upon it first. That was the case of D. P. Belden, of Hot Springs County.

Q. Was that case tried before a petit jury?—A. No, sir; it was not. It is set down for trial at the coming term.

Q. What was the ground of your finding?—A. Well, sir, stuffing ballot-boxes, altering poll-books and registration books. A great many votes were put in of persons who did not appear upon the registration books at all; in some of the precincts there were more votes than there were names upon the registration books.

Q. Under your law, are there any persons excluded from voting in Arkansas?—A. Only a few who are disfranchised by our State constitution.

Q. What classes of persons are they?—A. Well, I do not know exactly what classes are covered by our constitution—what the disqualifications are. I have not noticed that clause of our constitution for some time, and it is not exactly familiar to me now.

Q. Who composed the grand jury?—A. After the drawing of the jurors, both grand and petit, Judge Dillon decided that jurors who had been drawn from the counties that had been put in a new district by a recent act of Congress—or rather nineteen counties had been put into the western district—the judge discharged the jurors that had been drawn from those counties, for he decided that they could not serve as jurors in the eastern district, but they properly belonged to the western district, although they had been selected before the passage of the act. He discharged them the day the court met, on Monday, and instructed the marshal to empanel a new jury and have them in court the next morning at 9 o'clock. Of course, the marshal was compelled to get them from our city; and they were all, with one exception, from our city.

By the CHAIRMAN:

Q. The court was sitting at Little Rock?—A. Yes, sir; there were some seven or eight that were in counties that still remained in the old district; some twelve or fifteen were discharged because of being residents of counties that had been put into the new district. The balance of the jury was made up of citizens of Pulaski County.

By Mr. BLAIR:

Q. Little Rock is in Pulaski County?—A. Yes, sir.

Q. Were these jurors so drawn generally men of character and standing?—A. They were so considered; yes, sir. Judge Caldwell took occasion to compliment the jury, and to pronounce it the ablest jury that had ever appeared before his court. They were all competent men, business men, mostly merchants.

Q. Was it a mixed jury?—A. Politically, do you mean?

Q. Well, yes.—A. It was a mixed jury, but the majority were Republicans, two-thirds of them perhaps. There were a number of them who were business men of the town, whom I have known for years, but I never knew their politics, whether they were Democrats or Republicans. A majority of the jury, however, were classed as Republicans.

Q. Upon the returns that were laid before you from the office of the secretary of state, Edwards was not elected?—A. The tabular statement of the returns from the whole district showed that Edwards was not elected, but that Boles was elected by a large majority. There was a double poll held in two wards of the city, and in one precinct in the county. Now, counting the returns from both polls—and we considered that the only proper way to reach the full vote, for neither side claimed that there was any fraudulent voting at these double polls; the only question was which poll should be recognized as the proper one technically—counting the returns from both polls, I think it showed Bowles to have been elected by 2,130 votes. There was another way, by throwing out some of the precincts, that the majority for Boles was some 1,700. And then, by giving Edwards the benefit of all the doubtful polls, and throwing out some of the votes returned for Boles, he was elected—that is, Boles was elected—by some 800 or 900 votes.

Q. There was no way of figuring in Edwards?—A. From the returns before us, there was no possible way by which Edwards could be elected.

Q. And the law requires the governor to give the certificate upon the returns?—A. Sec-

tion 50 of the election law of the State of Arkansas, respecting members of Congress, is as follows:

"It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of elections to the clerks of the county courts, or sooner if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as have made returns, for such persons voted for as members of Congress, and the governor shall immediately thereafter issue his proclamation declaring the persons having the highest number of votes to be duly elected to represent the State in the House of Representatives of the Congress of the United States, and shall grant a certificate thereof, under the seal of the State, to the person so elected."

And I have here a copy of the proclamation of the governor.

Q. You can read it.—A. It is as follows:

PROCLAMATION BY THE GOVERNOR.

"*The State of Arkansas to all to whom these presents shall come, greeting:*

"Whereas, in pursuance of law, an election was held on the first Tuesday after the first Monday in November, A. D. 1870, in the third Congressional district of this State, for the election in said district of one Representative to represent the State of Arkansas in the House of Representatives of the Forty-second Congress of the United States; and whereas, from the returns of said election made to the secretary of state, it appears that in said third Congressional district, in the county of—

| | | | |
|---|---|---|---|
| Benton, John Edwards received | 745 | Pulaski, John Edwards received | 964 |
| Boone do | 106 | Perry do | 65 |
| Carroll do | 152 | Pope do | 416 |
| Crawford do | 424 | Pike do | 141 |
| Clark do | 813 | Polk do | 250 |
| Franklin do | 450 | Scott do | 199 |
| Johnson do | 531 | Sebastian do | 653 |
| Little River do | 193 | Sevier do | 379 |
| Madison do | 214 | Washington do | 611 |
| Marion do | 68 | Yell do | 400 |
| Montgomery do | 116 | | |
| Newton do | 67 | Total | 8,009 |

"In the county of—

| | | | |
|---|---|---|---|
| Benton, Thomas Boles received | 106 | Pulaski, Thomas Boles received | 912 |
| Boone do | 206 | Perry do | 164 |
| Carroll do | 164 | Pope do | 273 |
| Crawford do | 404 | Pike do | 278 |
| Clark do | 1,315 | Polk do | 71 |
| Franklin do | 303 | Scott do | 346 |
| Johnson do | 328 | Sebastian do | 725 |
| Little River do | 431 | Sevier do | 263 |
| Madison do | 298 | Washington do | 401 |
| Marion do | 109 | Yell do | 471 |
| Montgomery do | 216 | | |
| Newton do | 175 | | 7,959 |

"In the county of—

| | | | |
|---|---|---|---|
| Benton, A. W. Dinsmore received | 3 | Washington, John F. Edwards received | 4 |
| Crawford, J. O. Churchill received | 1 | Pulaski, Logan H. Roots received | 4 |
| Franklin, W. M. Fishback received | 1 | Pulaski, Logan H. Brooks received | 1 |

"Making, in the aggregate, for John Edwards, 8,009; for Thomas Boles, 7,959; for A. W. Dinsmore, 3; for J. O. Churchill, 1; for W. M. Fishback, 1; for John F. Edwards, 4; for Logan H. Roots, 4; and for Logan H. Brooks, 1:

"Now, therefore, I, Powell Clayton, governor of the State of Arkansas, by virtue of the authority in me vested by law, do hereby proclaim that John Edwards, in the third Congressional district, was at said election duly elected Representative of the State of Arkansas in the House of Representatives of the Forty-second Congress of the United States, beginning on the 4th day of March, A. D. 1871.

"In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at Little Rock, this 20th day of February, A. D. 1871.

[SEAL.] "POWELL CLAYTON,
"*Governor.*

"By the governor:
"ROBERT J. T. WHITE, *Secretary of State.*"

Q. And the grand jury found that that was a fraudulent certificate?—A. They found that this proclamation of the governor, issuing the certificate of election to Edwards, was not in accordance with the returns in the office of the secretary of the state as laid before us.

By the CHAIRMAN:

Q. What was the specific offense with which the governor was charged?—A. I think the district attorney, who is in this city, has a copy of the indictment, and he can probably explain these matters much better than I can.

Q. I understand you to say that the case in which the grand jury found the first indictment was a case in which frauds were charged in an election as between two candidates for the State senate?—A. Yes, sir; an election in Hot Springs County, in the thirteenth senatorial district, I believe.

Q. In that case a bill was presented, and upon the evidence you found it a true bill?—A. Yes, sir; the candidate who was seated, Mr. Belden, was indicated; and the judges, clerks, and registrars of election of that county were also indicted.

Q. You found a true bill against all of them?—A. Yes, sir.

Q. Had the alleged frauds in that election been investigated in a contest for the seat in the senate?—A. Yes, sir; a contest had been made there.

Q. And had been adjudicated there?—A. Yes, sir.

Q. Was the indictment against the defeated or the successful party in that contest?—A. Against the successful party.

Q. And the indictment is now pending for trial in the United States court?—A. Yes, sir, and will come up for trial at this coming term, I suppose.

Q. Have you any reason to apprehend that there will not be a full and fair investigation, and a just determination of the case?—A. In the court?

Q. Yes.—A. I have every reason to believe there will be. I have no reason to think otherwise.

Q. Whoever is guilty will be punished, and whoever is innocent will be acquitted?—A. Yes, sir. The frauds there are flagrant; there is not much question about that, if persons will look into them.

Q. That is also an indictment under the enforcement act?—A. Yes, sir.

Q. The other case of indictment you have referred to is one against Governor Clayton for giving the certificate you have read?—A. For furnishing a certificate of election to John Edwards.

Q. The State law, you say, makes the governor the canvasser of the returns?—A. It makes it the duty of the governor, within thirty days after the election, to make a canvass of the votes, make proclamation, and issue certificates of election.

Q. In the discharge of that duty is the secretary of state associated with him in any capacity which would invest him with authority to decide; or does the governor merely consult him?—A. His duty is merely clerical; the governor is the canvassing officer proper. I think the law states that the canvass shall be made by the secretary of state in the presence of the governor, and the governor shall, by proclamation, announce the result.

Q. It makes it the duty of the governor to award the certificate to the persons whom he judges to be elected?—A. Yes, sir.

Q. The responsibility of the decision is upon the governor?—A. Entirely.

Q. And it was because upon the evidence presented you believed that the governor had decided wrongfully ——?—A. Yes, sir; according to the returns laid before us.

Q. You found a true bill against him?—A. Yes, sir.

Q. And that case is now pending for trial in the United States court?—A. Yes, sir.

Q. Is there any reason to apprehend that the judge in holding the court, and the jury in administering the law there, will not do justice in the case?—A. Well, sir, I do not know about that; I cannot tell. I should suppose that justice would be done.

Q. The law has been faithfully administered thus far?—A. Yes, sir.

Q. You discharged your duty as a grand jury?—A. Yes, sir. We had reason to complain somewhat of the course taken by the judge of the district court. At the time this indictment was presented to the court the grand jury were discharged at once, without any previous notice.

Q. That was after you had returned the bill?—A. Yes, sir; on Monday morning, May 15. The case was brought to our notice on the Thursday before, and on Friday the testimony of the witnesses was taken. The witnesses were the ex-secretary of state (who was secretary of state at the time the canvass was made), the deputy secretary of state, and General Edwards. Those three were examined on Friday. The grand jury was not in session on Saturday. The court had adjourned over until Monday, and the grand jury adjourned over, expecting to present the indictment on Monday morning. On Monday morning, just as I was going to the jury room, Judge Caldwell told me to bring my jury down to the court-room that morning, for he was going to discharge us. That was fifteen minutes or a half an hour before the court met. I told him that we had some unfinished business, but probably we could finish it up in a couple of days. Our jury had been in session longer than any other jury. In fact, we had had a great many more witnesses to examine because of these election cases. But the judge told me to bring the jury down, and I did so, and

they were discharged. At the time we were discharged we had before us some fifteen or twenty indictments for various offenses; among them this indictment against Governor Clayton, which had been acted upon some days before, but which had not been presented because the court had adjourned over Saturday. But Judge Caldwell discharged the jury at once.

Q. After you had presented the indictments you had found?—A. Yes, sir.

Q. Had the other business of the court been completed?—A. Yes, sir; so far as cases were concerned.

Q. There were no other cases to be tried?—A. No, sir; but the judge had told me at my house, on the Wednesday or Thursday before, that he would keep the grand jury in session all summer if there were any violations of the enforcement act. I told him we had several cases.

Q. You heard, of course, nothing but the evidence on the part of the government; there was no defense?—A. Of course there was no defense.

Q. Was there any arrest and binding over of the governor before the indictment was presented?—A. No, sir; none whatever.

Q. There could be no trial at that court without a binding over?—A. No, sir. I think the governor was here in Washington at the time; I know he was not in the city at that time. He was there during a portion of the session of the grand jury, but that was the fore part of the session.

Q. Therefore that case could not have been tried then?—A. No, sir; it could not possibly have been tried at that term of the court.

Q. The case is now pending for trial?—A. Yes, sir.

Q. In the election for which the certificate was awarded, you say that Judge Boles and General Edwards were the opposing candidates?—A. Yes, sir.

Q. The certificate was awarded to General Edwards?—A. Yes, sir.

Q. What were his party relations? Was he a Republican or a Democrat?—A. Well, sir, Edwards was the recognized candidate of the Democracy.

Q. Mr. Boles was the Republican candidate?—A. Yes, sir; and General Edwards also claimed to be a Republican.

Q. The certificate of election was awarded by Governor Clayton to the Democratic candidate?—A. To the one who had been regarded as the candidate of the Democracy.

Q. You have been asked by General Blair about the political complexion of the grand jury that found this indictment against Governor Clayton; was there any party spirit exhibited by that jury?—A. No, sir; I do not think any member of the grand jury knew anything about the case until it was brought to our attention by the district attorney. A great number of the grand jury expressed regret that anything of the kind should have occurred.

Q. So that the matter remains undecided and for trial?—A. Yes, sir.

By Mr. POOL:

Q. Was the judge who discharged the jury the same judge who had complimented them?—A. Yes, sir; Judge Caldwell.

Q. You say the governor had the right to canvass the returns; what do you mean by the word "canvass?"—A. Well, to count the returns; to make up the official count of the returns as received.

Q. To inspect the returns?—A. Yes, sir; a general supervision of them, I suppose. The returns are sent to the secretary of state, and he puts them in tabular form, and the governor merely supervises them, I suppose.

Q. These returns are matter of public record?—A. Yes, sir.

Q. Are they open for the inspection of the public?—A. After they are canvassed; not before.

Q. You acted upon a copy of that record?—A. We took the evidence of the ex-secretary of state; we did not have the records before us, but we had a tabular statement to which he swore.

Q. You did not go outside of the face of that record?—A. Not at all. We examined no witness on any other point—only as to the record—except General Edwards, and he was called merely to prove a copy of the certificate as given him. The original was on file in this city.

By the CHAIRMAN:

Q. That is also the subject of a contest now pending in the House of Representatives of Congress?—A. Yes, sir.

By Mr. POOL:

Q. You did not go into an investigation of any collateral facts?—A. None whatever.

Q. You did not inquire into the legality or formality of the returns?—A. No, sir; we took that for granted.

Q. Does not the law of Arkansas require the returns of elections to be made in some specified form?—A. Well, no, sir; I do not know that it does. It requires that the returns shall be made by the different county clerks at a certain time.

Q. Does it not require them to be made in a certain way?—A. No, sir; I do not think so.

Q. By certain officers?—A. Yes, sir; by the county clerks.

Q. You did not inquire into the legality of those returns?—A. No, sir.

Q. You took the returns upon their face?—A. Yes, sir, as presented to the secretary of state; and he swore those were all and the only returns in his office.

Q. Is the governor a Republican?—A. Yes, sir.

Q. You say there was no party spirit exhibited by the jury?—A. There was none whatever; not the least; no more in that case than in any other. There were some on the grand jury who were the personal political friends of Governor Clayton.

Q. Were there any personal political adversaries of Governor Clayton on the jury?—A. No, sir.

Q. You have spoken of frauds occurring in elections in Arkansas; were they committed by both political parties, or were they confined to one party?—A. You refer to the two general parties, Republican and Democratic?

Q. Yes, sir.—A. Those brought to our notice, as members of the grand jury, were committed principally by one party—by the Republicans. It was claimed on the part of some parties in the southern part of the State that there was some intimidation; that negroes were not permitted to vote. Some charges of that kind were made against Democrats, but they were not able fully to sustain them.

Q. There was no prosecution of Democrats for any illegal interference with elections?—A. No, sir.

Q. No bill was found against any Democrat?—A. No, sir. There were one or two cases brought before us, but we were not able to obtain sufficient proof to indict them.

Q. You sought for no facts as explanatory of the governor's action?—A. No, sir; we knew of nothing; we could get at nothing but the returns.

Q. Was any witness sworn before the grand jury other than the secretary of state, the——A. The ex-secretary of state. The present secretary of state was not then in the city. He had but recently entered upon the duties of his office, and his chief clerk was made deputy secretary of state, and he was before us in regard to the records.

Q. In relation to the authenticity and correctness of the report?—A. Yes, sir; and General Edwards was before us as to the correctness of a copy of the certificate which had been furnished us.

Q. And you examined no witnesses outside?—A. No, sir.

By Mr. BLAIR:

Q. Immediately after this indictment was found there was a change made by the President in the offices of marshal of the State and district attorney?—A. Yes, sir; some few weeks after—a very short time.

Q. What was the ground for that change?—A. Well, sir, it was generally considered that it was on account of this indictment against Governor Clayton. It was claimed that Governor Clayton had caused the removal of those parties on account of that indictment; there was no other reason known; there could have been none. The governor had for some time been making a strong effort to have those two officers removed, on the ground that they were making a personal fight upon him. He tried to influence Judge Caldwell to give his influence for their removal, which Judge Caldwell declined to do at the time, according to his statement to me, stating that he believed them to be efficient and competent officers; that he was perfectly satisfied with them, and did not care to have them removed, and did not think they should be. The judge told me that, at the time of his first conversation with Governor Clayton, he assured the governor that those officers would not do anything to injure him. But after this indictment was found, the judge wrote a letter to Governor Clayton withdrawing the assurances he had previously given him. It was claimed that the removal was made upon that letter; that the letter was laid before the President and he removed them at once.

Q. Who were appointed in their places?—A. Mr. Harrington was appointed in the place of Mr. Whipple, and Mr. Mills in place of Mr. Catterson. Mr. Mills was the old marshal, some two or three years ago; Mr. Catterson succeeded Mr. Mills.

Q. Are these new appointees known to be friends of Governor Clayton?—A. Yes, sir. Mr. Harrington was an aid on General Clayton's staff during the whole war, I believe, and also adjutant of his regiment at the beginning of the war, I believe. Mr. Mills was an old citizen of the State; took no part in the war, either way; was a Union man, and has always been regarded as a warm personal friend of Senator Clayton.

Q. They were appointed on his recommendation?—A. Yes, sir; at least it is so supposed.

Q. And Judge Caldwell united with him in having these men removed from office?—A. Well, not exactly, as he tells me. After the discharge of the grand jury, I called upon Judge Caldwell. He went on to say that he had had this conversation with Senator Clayton; that he had given him some assurances; and that after the indictment had been found he wrote a few lines to Senator Clayton and withdrew the assurances he had given him.

Q. Do you mean that the grand jury were discharged by Judge Caldwell because they had found an indictment against Senator Clayton?—A. I do; yes, sir; I do not know of any other reason.

Q. What chance do you think there is of convicting Governor Clayton upon this charge, with a marshal and judge who have it in their power to form the jury as——

The CHAIRMAN. I do not think we should go into the opinion of this witness as to how the law will be administered in that State.

Mr. BLAIR. I do not think we have heretofore observed that strict rule of examination. I do not think this is a case where the strict rule should be enforced to shelter a man who has evidently——

The CHAIRMAN. I am opposed to sheltering any criminal. But I think we should confine our examination to the execution of the law heretofore, and not extend it to the mere opinion of the witness as to how the law may hereafter be executed.

Mr. BLAIR. This is the first time objection has been taken to such an inquiry. The chairman has himself asked this witness if he believed that justice would be done in this case.

The CHAIRMAN. I asked the witness if there was any reason to suppose that the course of justice would be interfered with, or something to that effect.

Mr. BLAIR. I supposed I was allowed the same latitude in this examination as the chairman of the committee.

The CHAIRMAN. Certainly.

Mr. BLAIR. In pursuance of that, I have attempted to ascertain the opinion of the witness.

The CHAIRMAN. I interposed only from a desire to save time. As I have failed to accomplish that object, you may go on.

By Mr. BLAIR:

Q. I merely want to ascertain your opinion in regard to this matter; whether you believe that Whipple and Catterson were removed in order to put friends of Governor Clayton in their places so as to protect him against this charge?—A. I could not state positive as to that. I judge merely from the course taken by the party indicted. I suppose if he could get friends in there to protect him, he would be very happy to do so. But whether or not these parties would do so, I cannot say. I never saw Mr. Harrington in court, and I do not know what he would do. I know Mr. Mills very well; but I do not see how the marshal himself could shield him much with the present system of impaneling juries.

Q. How are juries impaneled there?—A. They are selected by three commissioners.

Q. How are the commissioners appointed?—A. They are appointed by the judge. There was a vacancy created at Helena, Phillips County, and Judge Caldwell appointed a gentleman from Little Rock, a banker there. A majority of the jury commissioners, two out of three, are Democrats. We hardly know what Mr. Mills is.

Q. From what you have already stated, it would appear that there had been conversations between Judge Caldwell and Governor Clayton in reference to some apprehended action of the grand jury?—A. Yes, sir; something of the kind seems to have been anticipated by Senator Clayton.

Q. He anticipated that he would be called to account for his action in this matter?—A. That was some three or four weeks before the indictment was found.

Q. And he received the assurance of Judge Caldwell that nothing of that sort would be done?—A. Not that exactly; but Judge Caldwell assured him that he had the greatest confidence in Colonel Whipple and General Catterson, and that he did not think they would do anything of the kind. But after the indictment was found the judge, as I think he told me, wrote to Senator Clayton the same day, withdrawing the previous assurances he had given him. The construction put upon it by the friends of Catterson and Whipple was that the judge first thought they were honest and afterward changed his mind; that is the view we took of it.

Q. Then, the whole affair—that is, the retention or the expulsion of those men from office—turned entirely upon the way in which they discharged their duty in regard to Governor Clayton?—A. In this particular case, yes, sir. It was believed that if Governor Clayton had not been indicted those officers would now be occupying their offices. But Judge Caldwell denied to me positively, in the presence of a portion of the grand jury, who called upon him for an explanation of his course in discharging them as he did, that that had anything to do with it. We felt aggrieved at his action, and I asked him if he had discharged the grand jury because we indicted Senator Clayton, and he said emphatically that he had not done it for that reason. The newspapers had been making a great deal of talk over it; they were slandering the members of the grand jury, and we felt a little sore over it, and concluded to call upon the judge in reference to it. I prepared a series of questions to which I desired to obtain written answers, for we wanted to publish them in order to place ourselves right before the public. The judge read the questions, commented upon them pretty thoroughly, but declined to give any explanation in writing. In our conversation, however, he said he had not discharged the grand jury because they had indicted Senator Clayton. The papers had charged that the grand jury was packed, and corrupt, and everything of that kind.

Q. What papers?—A. More particularly the Clayton organ at Little Rock, the Republican. I asked Judge Caldwell for a letter, with a view to publication, in order to explain matters. It had been charged that the judge had done so and so; we had been reflected

upon very severely and charged with being corrupt. The judge declined to answer our questions in writing, but answered them verbally. Finally he gave us a card of a few lines for publication. It did not cover the points we wanted; we did not consider it exactly satisfactory; at the same time we did not want to keep up any feeling. Judge Caldwell and myself have always been on very intimate terms; I have lived in his family for three years, and our families are very intimate. The charges against us had also been copied in the New York Tribune, and, I think, in one of the Washington papers. The following is the card which I procured to be published in refutation of those charges:

"LITTLE ROCK, *August* 4, 1871.

"Various charges having been made in papers in this State and elsewhere regarding the grand jury impaneled at last session of United States circuit court in this city, and in vindication of ourselves, we beg leave to submit the following card from his honor Judge Henry C. Caldwell:

"EDWARD WHEELER,
"*Foreman, in behalf of Grand Jury.*"

"I desire to state that I have expressed the opinion frequently that the grand jury at the last term of the United States circuit court was, for intelligence, capacity, and honesty, equal to any grand jury ever impaneled in this district, and I have seen no reason to change my opinion. They were not discharged because I supposed them to be acting corruptly or improperly, but because the business of the court for the term was over—they had been in session much longer than any previous grand jury—and because I deemed it my official duty so to do.

"HENRY C. CALDWELL."

Q. Now, in your opinion, was the grand jury discharged because they brought in a bill against Governor Clayton?—A. Yes, sir; I firmly believe that they were; because I had told Judge Caldwell at my house, two or three days before, that we had unfinished business before us, and that we would finish it by the next Tuesday or Wednesday; that is, the Tuesday or Wednesday after the Monday on which we were discharged. We had investigations of the same character in our county in connection with frauds alleged in the Congressional election. We had examined some thirty or forty witnesses, but were not able to complete the case because we were discharged. Every member of that grand jury believes firmly that they were discharged because they indicted Senator Clayton.

Q. Judge Caldwell had previously assured you that he wanted you to remain in session until you had completed that whole business?—A. Yes, sir. When we were brought into court on Monday morning the judge asked if we had any unfinished business before us, and I told him we had, and specified particular cases; but that we would be able to finish up the business before us the next day, or certainly the second day after. He merely remarked that there would be another term of the court, or that was not the last term of court, and that the next grand jury could take up the matter, and then he discharged us.

By the CHAIRMAN:

Q. I understand you to say that the letter of Judge Caldwell was laid before the President?—A. The letter that he wrote to Senator Clayton, so I have understood; I know nothing about that, only what I have learned from rumor. I think the President told General Catterson that he had seen the letter. It was written as a private note to Governor Clayton, and marked "confidential." Judge Caldwell read a copy of it to me.

Q. In stating the motives which led to the removal of those officers, do we understand you to attribute such motives to any one else than Governor Clayton?—A. I do not know what other influences might have been brought to bear upon the President.

Q. You say that the letter of Judge Caldwell was laid before the President?—A. Yes, sir.

Q. Now, whatever may have been the motive of Senator Clayton in laying the letter of Judge Caldwell before the President, what is the desire, if any, as expressed by the people of Arkansas, in reference to the retention of the present officers, or the restoration of the old officers?—A. Well, sir, I think it is the almost unanimous desire of the republicans of our State that the old officers should be reinstated.

Q. Has such an application been made, or is it to be made, to the President?—A. I think it has been made.

Q. Is there any difference existing between the Senators from that State on this subject that may give rise to delay?—A. I do not think there is any difference between them personally. There are the two factions of the republican party there. Senator Clayton claims to be at the head of one, and Senator Rice at the head of the other, I believe; although there is nothing that I have seen to show that Senator Rice is identified with what we call the "brindle-tail" party.

Q. There are different factions in the State?—A. Yes, sir.

Q. And one is called the Clayton faction?—A. Yes, sir; and the other is regarded as in the Rice or Brooks interest.

Q. In relation to a conversation which you spoke of having with Judge Caldwell, you referred to some assurances which the judge had given to Senator Clayton?—A. That is what the judge said to me.

Q. Assurances of what character?—A. The judge tells it in this way: That Senator Clayton met him in the street and said to him that he was going to have Catterson and Whipple removed. The judge said to me that he was quite indignant at that, and said that it should not be done; that they were efficient and competent officers, and that he was very well satisfied with them. Senator Clayton made the point that they were making a fight on him; although nothing had then been done in the courts, for that was three weeks before the indictment was found; and he said that he wanted to have them removed. Judge Caldwell says that he assured Senator Clayton that those officers would not do anything; that he had confidence in Colonel Whipple, and that he would not do anything, aside from his official duty, to injure Senator Clayton or his friends. But after this indictment was found, Judge Caldwell wrote a note to Senator Clayton, withdrawing his assurances in relation to Colonel Whipple, but said nothing about General Catterson. Nobody ever knew why General Catterson was removed.

Q. As you were the foreman of the grand jury, I will ask you at whose instance was the indictment sent before you? In other words, had there been any information laid before a United States commissioner charging Senator Clayton with this offense? Or was it sent before you upon the mere motion of the district attorney himself?—A. It was brought to our notice in this way: According to the charge of Judge Dillon, all matters had to be brought before us by the district attorney, except through the commissioner. This matter was brought before us by the district attorney, who furnished us with a list of witnesses and was present the next day and examined them. He says it was brought to his notice by an affidavit made by Judge Boles.

Q. Had that affidavit been made before a United States commissioner?—A. I do not know where it was made, except that it was filed by the district attorney and thus brought to his notice, and he furnished the witnesses before us.

Q. As you are before us, I will ask you to state if there has been in the State of Arkansas, within the last two years, any general interference with the rights of citizens, anything of what is popularly known as Ku-Klux outrages, since 1868?—A. Not since that time. I know nothing personally in regard to Ku-Klux, but I believe there was such an organization in our State at one time, a very strong organization, about the time of the Presidential election in 1868. I know I had friends who were assassinated.

Q. Has there been any since then?—A. No, sir; and now our State is remarkably quiet, as much so, I think, as any State in the Union.

By Mr. POOL:

Q. What put a stop to those Ku-Klux operations?—A. Well, sir, I think the election of General Grant had a great deal to do with it.

Q. Did Governor Clayton discharge his duty in that respect?—A. Yes, sir, he did; very faithfully.

Q. You say that Governor Clayton had been trying, for some weeks before this bill of indictment was found, to have those two officers removed?—A. Yes, sir. He had made a personal appeal to the President for their removal. The matter was referred to the Attorney-General, who, by direction of the President, telegraphed to Judge Caldwell during the time the court was in session, and before this indictment was found. Judge Caldwell showed me the telegram of the Attorney-General asking, by direction of the President, if there were any official reasons why Catterson and Whipple should be removed. The judge telegraphed back a very strong answer, that he knew of nothing. I believe Colonel Whipple, who is here, has a copy of his telegram.

Q. You state that the anxiety of Governor Clayton to have those men removed was because he considered them his enemies; that they were persecuting him?—A. I suppose that must have been his object; I do not know what else. They were not political friends of his.

Q. You say that Judge Caldwell assured Governor Clayton that those men would not continue their persecution of him; that they would drop the matter?—A. That is what Judge Caldwell told me.

Q. He said that those men told him, in a conversation he had with them, that he might give that assurance?—A. No, sir; I did not understand it in that way. He merely took the responsibility of saying that he had confidence in those officers. I do not understand that he had any conversation with them on the subject.

Q. You say that Judge Caldwell told you that he did not discharge the grand jury, of which you were foreman, because they found that indictment against Senator Clayton?—A. Yes, sir; he told me so very emphatically and decidedly.

Q. Yet you say you believe he did discharge the grand jury for that very reason?—A. Yes, sir; I have reason to believe so; I do not know what else he did it for.

Q. How could the discharging of that grand jury shield Governor Clayton, or be of the least service to him?—A. Well, sir, I suppose the judge did it through excitement as much as anything. He possibly might have thought that by discharging the grand jury the in-

dictment would not be presented. The indictment was found and ordered to be presented on Monday morning, before Judge Caldwell told me that the grand jury would be discharged.

Q. If Governor Clayton was endeavoring for weeks before to have these men removed, because he believed they were his enemies and were machinating against him, how is it you can say they were removed because this indictment was found?—A. I cannot understand what other reason he could have had, because only a few days before he had expressed himself to me as wanting the grand jury to keep in session.

Q. But you say that Governor Clayton was trying before the indictment was found to have those men removed?—A. Yes, sir; and the telegram from the Attorney-General to Judge Caldwell was two or three weeks before the indictment was found.

Q. Then it was not the mere fact that this indictment was found that led Governor Clayton to have those men removed, because he had been trying before to have those men removed?—A. Yes, sir; he had been trying before and failed, because Judge Caldwell had telegraphed to the President, through the Attorney-General, that he saw no reason for their removal.

By Mr. BLAIR:

Q. You say that General Edwards, of the present House of Representatives, claims to be a Republican?—A. Well, sir, he was so regarded in Iowa, I believe. I know General Edwards very well personally. He has never taken any active part in politics until this last Congressional election. He was an Independent candidate; he was not nominated by either party. There were two Republican candidates, Judge Boles and Judge Searle, each one representing a particular faction. Judge Searle was Clayton's candidate, so regarded; he withdrew some two weeks before the election. The Democrats made no nomination, but took up Edwards without any nomination.

Q. Was there any quarrel between Boles and Clayton?—A. No, sir; I think not. I think their relations had been very friendly up to that time.

Q. Are you not mistaken about that?—A. I will not be sure about it, for I do not know; but I do not remember to have heard of any difficulty between them, though there might have been.

Q. What was the reason assigned for Clayton acting as he did?—A. It was generally regarded that he expected by supporting Edwards to gain some Democratic votes in the legislature for United States Senator.

Q. That it was for his own interest and to secure his own election as Senator?—A. It was so understood; yes, sir.

Q. That is the explanation of it?—A. That is, the object of the frauds in Hot Springs County was to put Clayton men in the legislature; the object of the frauds in Pulaski County was to put Democrats in the legislature, for the Clayton faction had a very small vote in that county, and the Democrats were given seats in the legislature. It was claimed, and it has been sworn to by some prominent Democrats, that General Edwards was given the certificate upon a trade made by Senator Clayton, that certain parties would not contest certain seats in the legislature. That was the testimony developed in the investigation made in the Boles and Edwards contested-election case.

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WASHINGTON, D. C., *September* 25, 1871.

WILLIAM G. WHIPPLE sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?—Answer. At Little Rock, Ark.

Q. What is your occupation?—A. I am a lawyer.

Q. How long have you lived in the State of Arkansas?—A. Since September, 1868.

Q. Have you held any official position there?—A. Yes, sir; I was attorney for the United States for the eastern district of Arkansas from the 1st of October, 1868, until I was suspended in June last.

The CHAIRMAN. This witness having been summoned at your instance, General Blair, you will please conduct his examination in the first instance.

By Mr. BLAIR:

Q. You have been recently suspended from your official position in Arkansas?—A. Yes, sir; I think the date of the suspension was the 31st of May last.

Q. What do you understand to be the reason for your suspension from office?—A. The President states that it is on account of a letter written by Judge Caldwell, the United States district judge for that district, to Senator Clayton.

Q. What was the purport of that letter?—A. I have never seen the letter; but I know what Judge Caldwell says is its purport and substance. He stated to me that in that letter he desired to retract the assurance he had previously given to Senator Clayton that he was sat-

isfied I would not use the office of district attorney unfairly against him; and he wrote that if he were in the place of Senator Clayton he would do all he could to have me removed from office.

Q. Does that statement of Judge Caldwell convey the truth in regard to the matter; have you used your office unfairly against Senator Clayton?—A. I have not designed to do so. I think I have not done anything more than my duty. I think if I had done anything less than I did, in regard to the prosecution against Senator Clayton, I ought to have been suspended.

Q. What was the prosecution out of which arose this statement on the part of Judge Caldwell?—A. It arose out of the indictment of Senator Clayton. He was indicted at the recent April term of the United States circuit court for that district for violating the twenty-second section of the enforcement act of Congress of May 31, 1870.

Q. The election law of Congres?—A. Yes, sir; for issuing a false and fraudulent certificate of election to General Edwards as the Representative-elect to the Forty-second Congress from the third Congressional district of Arkansas.

Q. I wish you to give to the committee a full and complete statement of all the facts connected with the indictment of Senator Clayton for a violation of that enforcement act, and to state distinctly what part you took in the matter.—A. I will state that I did not know that Senator Clayton, in issuing the certificate of election to General Edwards, was supposed to have violated any act of Congress, until my attention was called to the case by a letter of the Hon. Thomas Boles, the recent member of Congress, and who was the candidate against Edwards in that district. I have the original letter here.

Q. Read it.—A. It was presented to me at the time it bears date, and is as follows:

"LITTLE ROCK, ARK., *May* 10, 1871.

"DEAR SIR: Having reason to believe that many of the judges of the election recently held in this State on the 8th day of November, 1870, may be indicted by the United States grand jury, and believing, as I do, that whatever wrong they may be chargeable with had its inception with some higher in authority than they; and believing that those occupying high official position should be held as strictly amenable to the law as our humblest citizens; and believing that Governor Powell Clayton, in granting the certificate of election to General John Edwards, as member-elect to the Forty-second Congress of the United States from the third Congressional district of the State of Arkansas, when the vote of said district, as officially canvassed, showed a majority for me of more than two thousand votes, violated the provisions of the twenty-second section of the enforcement act of Congress approved May 31, 1870, I therefore respectfully beg leave to call your attention, and through you the attention of the grand jury, to the above case, and refer you to Hon. Robert J. T. White, late secretary of state, and Major Frank Strong, for the testimony to establish the violation of law above mentioned.

"Very respectfully,

"THOMAS BOLES.

"WILLIAM G. WHIPPLE, Esq.,
"*U. S. District Attorney, Eastern District of Arkansas.*"

After Judge Boles called on me and left that letter with me, I then called the attention of the foreman of the grand jury, Captain Wheeler, to the case, and gave him the names of the witnesses. Captain Wheeler came into my office an hour or two afterward. I did this without going out of my office. He had the witnesses subpœnaed; they are both understood to be Clayton men. It was on Wednesday or Thursday that Judge Boles called on me. On the Friday following, two of the witnesses—Major Strong and General John Edwards—who happened to be in town, were brought before the grand jury, and I was present in the course of my duty and examined them as I did other witnesses. After taking their testimony, the grand jury adjourned from Friday until the next Monday. On that day they called in the secretary of state, Mr. White, and examined him. I was not present when he was examined; I never appeared in that case before the grand jury after Friday. They examined Mr. White on Monday, and found the indictment which was presented that noon —Monday—at 12 o'clock. All I ever did in the case with the grand jury was simply to examine two witnesses. I expressed no opinion upon the facts in the case, but gave my opinion upon that section of the law, as they requested.

Q. Have you the law which requires the governor to canvass the votes?—A. Yes, sir.

Q. Please read it.—A. This morning I stepped down to the law library here, and copied from the Arkansas statutes the section which prescribes the duty of the governor in relation to Congressional elections. I will state, in the first place, that the law requires the judges of the election precincts to make their returns to the county clerk immediately after the election. The county clerk is required, within five days thereafter, to open those returns, and then, within two days, to mail to the secretary of state an abstract of those returns; and within thirty days afterward the secretary of state is required to cast up and arrange the votes in the presence of the governor. And it is made the duty of the governor immediately to issue a proclamation declaring the persons having the highest number of votes to

be duly elected, and to grant a certificate thereof, under the seal of the State, to each person so elected. The section I have copied is as follows:

"SEC. 50. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of the election to the clerks of the county courts, or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as have made returns for such persons voted for as members of Congress, and the governor shall immediately thereafter issue his proclamation declaring the persons having the highest number of votes to be duly elected to represent the State in the House of Representatives of the Congress of the United States, and shall grant a certificate thereof, under the seal of the State, to the person so elected."—*Act of July* 23, 1868.

Q. Under that section the governor has nothing to do in canvassing the votes?—A. No, sir.

Q. He is simply to take the result, as shown by the secretary of state?—A. Yes, sir.

Q. And to issue his proclamation and certificate upon that result?—A. Yes, sir; I understand the duty of the secretary of state to be simply ministerial. The language of the law is that he shall "cast up and arrange the votes." The secretary of state, as he says, understands that his duty is simply arithmetical. I have here a certified copy of the election returns from the third Congressional district of Arkansas. There are three returns for Pulaski County, the county in which Little Rock is situated; there is but one return for each of the other twenty counties of the district Upon the returns from those twenty counties the majority shown is two for Boles, not counting the returns for Pulaski County, as appears by this abstract; there were three returns for Pulaski County, made by the county clerk; the first return is the principal one—the full one. That, however, fails to give the votes in Richwoods precinct—a small precinct. It gives the votes of only one poll in the first and third wards of Little Rock and of Eagle Township, of Pulaski County, whereas there were two polls there. That arose from this fact: under the State statute it is lawful for the voters to elect the judges and clerk of an election precinct, if there are none duly appointed before the election, or if they fail to be present and attend to their duties. Under that statute certain officers of election for those precincts were chosen on election day. On the one hand it is claimed that they were regularly chosen, and on the other hand it is claimed that they were not regularly chosen. There were two polls maintained in those precincts. As I understand, there never has been any claim that at either poll in those precincts there was any fraudulent voting or any repeating. In confirmation of that, the sum total of both polls in those precincts is about the usual vote cast in those precincts.

Q. What is the result of the first return from Pulaski County?—A. I will answer that question, if you will allow me, after I have made my statement.

Q. Very well, go on.—A. The second return gives the votes of what are called the Edwards polls; that is, the polls run by the friends of Edwards in those three precincts. The third return is simply the vote of the Richwoods precinct. The following is the certified copy of the returns:

"*Abstract of votes cast at an election held in Pulaski County on Tuesday, the 8th day of November, A. D.* 1870, *for Representative in the Congress of the United States from the third Congressional district of Arkansas:*

| Election precinct. | No. of votes cast for Thomas Boles. | No. of votes cast for John Edwards. | No. of votes cast for Logan H. Roots. | No. of votes cast for Logan H. Brooks. |
|---|---|---|---|---|
| City of Little Rock— | | | | |
| First ward | 359 | 5 | ..... | ..... |
| Second ward | 102 | 113 | ..... | ..... |
| Third ward | 400 | 9 | ..... | ..... |
| Fourth ward | 205 | 153 | ..... | ..... |
| Big Rock | 325 | 68 | ..... | ..... |
| Campbell | 345 | 13 | ..... | ..... |
| Eagle | 104 | 1 | ..... | ..... |
| Ashley | 554 | 75 | ..... | ..... |
| Owen | 21 | 41 | ..... | ..... |
| Maumelle | 11 | 28 | ..... | ..... |
| Eastman | 356 | 15 | ..... | ..... |
| Mineral | 6 | 14 | ..... | ..... |
| Bayou Mete | ..... | 44 | ..... | ..... |
| Cypress | ..... | 12 | ..... | ..... |
| Plant | 5 | 32 | 4 | 1 |
| Pyeatt | 66 | 53 | ..... | ..... |
| Gray | 33 | 81 | ..... | ..... |
| Fourch | 47 | 41 | ..... | ..... |
| Badgett | 234 | 3 | ..... | ..... |
| Union | 19 | 14 | ..... | ..... |
| Clear Lake | 49 | 15 | ..... | ..... |
| Prairie | 12 | 113 | ..... | ..... |
| Caroline | 14 | 213 | ..... | ..... |
| Richwoods* | ..... | ..... | ..... | ..... |
| | 3,267 | 1,156 | 4 | 1 |

* In this precinct there were 41 votes polled, but the returns do not show whom for.

G. W. McDIARMID,
*Clerk County Court Pulaski County.*

"STATE OF ARKANSAS, *County of Pulaski:*

"I, George W. McDiarmid, clerk of the county court for the county aforesaid, do hereby certify that the above is a true copy of the abstract of votes cast for Representative in Congress for the third Congressional district of Arkansas at an election held in said county on the 8th day of November, A. D. 1870.

"Witness my hand and official seal this 11th day of November, A. D. 1870.

[SEAL.] "G. W. McDIARMID,
"*Clerk County Court of Pulaski County.*

"Abstract of statement of votes received at my office purporting to be election returns of the 8th of November, 1870, but the same not appearing in the county poll-books, and returns from the same precincts on the county poll-books having been filed in my office, these were not included in the abstract of election returns.

"FOR CONGRESS, THIRD DISTRICT.

| Precinct. | Thomas Boles. | John Edwards. | Scattering. |
|---|---|---|---|
| First ward, Little Rock | 18 | 223 | 1 |
| Third ward, Little Rock | 17 | 163 | ..... |
| Eagle | ..... | 70 | ..... |
| Total | 35 | 456 | 1 |

"Witness my hand this 14th day of November, 1870.

"G. W. McDIARMID,
"*Clerk County Court, Pulaski County.*

"STATE OF ARKANSAS, *County of Pulaski:*

"I, George W. McDiarmid, clerk of the county court, do hereby certify that the above is a true copy of the abstract of votes given for Congressmen in the manner therein stated.

"Witness my hand and official seal this 1st day of December, A. D. 1870.

"G. W. McDIARMID,
"*Clerk County Court, Pulaski County.*

"Abstract of votes given for Representative of the State of Arkansas in the Congress of the United States, in Richwoods precinct, at an election held therein on the Tuesday after the first Monday in November, A. D. 1870, the returns therefrom not being received in time to be embodied in the abstract already made and filed:

| | |
|---|---|
| Thomas Boles | 30 |
| John Edwards | 10 |

"Witness my hand this 1st day of December, A. D. 1870.

"G. W. McDIARMID,
"*Clerk County Court, Pulaski County.*

"STATE OF ARKANSAS, *County of Pulaski:*

"I, George W. McDiarmid, clerk of the county court for the county aforesaid, do hereby [certify] that the above is a correct abstract of the votes given for Representative in Congress at an election held in said precinct on the 8th day of November, 1870.

"Witness my hand and official seal this 1st day of December, A. D. 1870.

[SEAL.] "G. W. McDIARMID,
"*Clerk County Court of Pulaski County.*

"OFFICE SECRETARY OF STATE, ARKANSAS,
"*Little Rock, July* 1, *A. D.* 1871.

"I, James M. Johnson, secretary of state of Arkansas, do certify that the foregoing sheets, marked 'One,' 'Two,' and 'Three,' respectively, are true and correct copies of the returns made to this office by the clerk of Pulaski County of the votes for Congressman from the third Congressional district, Arkansas, at the election of November 8, 1870.

"In testimony whereof I have hereunto set my hand and official seal, at Little Rock, Arkansas, this 30th day of June, A. D. 1871.

[SEAL.] "J. M. JOHNSON,
"*Secretary of State, Arkansas.*

"THIRD CONGRESSIONAL DISTRICT.

| Counties. | John Edwards. | Thomas Boles. | Scattering. |
|---|---|---|---|
| Benton | 745 | 106 | 3 |
| Boone | 106 | 206 | ..... |
| Carroll | 152 | 164 | ..... |
| Crawford | 424 | 404 | 1 |
| Clark | 813 | 1,315 | ..... |
| Franklin | 450 | 303 | .....1 |
| Johnson | 531 | 328 | ..... |
| Little River | 193 | 431 | ..... |
| Madison | 214 | 298 | ..... |
| Marion | 68 | 109 | ..... |
| Montgomery | 116 | 216 | ..... |
| Newton | 67 | 175 | ..... |
| Perry | 65 | 164 | ..... |
| Pope | 416 | 273 | ..... |
| Pike | 141 | 278 | ..... |
| Polk | 252 | 71 | ..... |
| Scott | 199 | 346 | ..... |
| Sebastian | 653 | 725 | ..... |
| Sevier | 379 | 263 | ..... |
| Washington | 611 | 401 | .....4 |
| Yell | 450 | 471 | ..... |
| Total | 7,045 | 7,047 | 9 |

"OFFICE OF SECRETARY OF STATE, ARKANSAS.

"I, J. M. Johnson, secretary of state, Arkansas, certify that the above table exhibits a correct abstract of the returns of the election for Congressmen in the third Congressional district of Arkansas, held November 8, 1870, as made to this office by the clerks of the several counties composing said district, except the county of Pulaski, which is omitted from above table.

"Witness my hand and seal of office, at Little Rock, this 30th day of June, A. D. 1871.

[SEAL.] "J. M. JOHNSON,
"*Secretary of State.*"

The WITNESS. I have added up these returns in four different ways.

The CHAIRMAN. Do you desire, General Blair, to go here into the question of who was actually elected, or do you wish simply to inquire whether the law was violated by Governor Clayton?

Mr. BLAIR. I just want to understand the position of the question upon which the governor acted.

The WITNESS. I wish to show, if the committee please, that, in any state of the case, Boles was elected according to these returns.

The CHAIRMAN. That is not the question before us, but whether the law of the State has been executed. The question of election is one for the House of Representatives to determine. I only inquired of General Blair if he desired to go into a full examination of this contested election.

Mr. BLAIR. I want the witness, in the first place, to state the facts upon which the indictment was found. Then I want him to testify as to the action of Governor Clayton and the President upon those facts, and then I shall ask him some other questions bearing upon the subject. I think that the precise state of facts under which Governor Clayton gave this certificate to General Edwards is one that it is important for us to ascertain. That is what I want to get at now.

The CHAIRMAN. If that involves the question as to who was actually elected, I think it is outside of our duty.

Mr. BLAIR. It involves the question of who was elected on these returns, because that is involved in the question of whether Governor Clayton was criminal in giving this certificate. The other man might well be elected, and Clayton have been criminal in giving him the certificate, if the returns in the office gave the election to Boles. Although he might have known of his own knowledge that Edwards was elected, he is criminal in giving the certificate against the returns. We are inquiring into the execution of the law, and I want to see if the President himself has not violated the spirit of the law in removing these officers.

The CHAIRMAN. That does not render it necessary for this committee to determine whether Mr. Boles or Mr. Edwards was elected.

Mr. BLAIR. I do not want to get at who was actually elected, but who was elected according to the returns in the office of the secretary of state, and by the record that he made and presented to the governor for his action.

The CHAIRMAN. The witness has presented here an abstract of the vote.

Mr. POOL. Why not have the facts stated upon which the grand jury acted? As we have already gone into the transactions before that grand jury, if these things appeared before the grand jury, and upon them they found the bill, they might be received as testimony here.

The CHAIRMAN. I understand that the returns, of which the witness has produced here a certified copy, is what was before the grand jury, produced by the secretary of state.

The WITNESS. Yes, sir; I thought some little explanation of the returns was necessary, as there are three of them.

Mr. BLAIR. That is what I want.

By the CHAIRMAN:

Q. Was the explanation given to the grand jury which you propose now to give this committee?—A. Yes, sir.

Q. By whom was it given?—A. By Major Strong, deputy secretary of state.

Q. Then go on with the explanation.—A. There are four ways of counting the returns: one, by throwing out all the votes at the double polls; another, by counting all the votes at all the polls; another, by counting only the votes at the Boles polls; and another, by counting only the votes at the Edwards polls. If you count only the votes at the Boles polls, as they appear upon this first return, then Boles was elected by 2,131 votes. If you throw out the votes at both polls in those three precincts, he is still elected by 1,343 votes. If you count only the votes at the Edwards polls in those three precincts, and throw out the votes at the Boles polls, which is the most unfavorable way of counting for Boles, then he was elected by 922 votes. If you count all the votes at both polls, he was elected by 1,710 votes, as appears by these returns. Now, the secretary of state testifies that these results were shown on this examination when the governor was present, which examination took place about the first of December last; but no returns were questioned at all.

By Mr. POOL:

Q. And that appeared before the grand jury in just that way?—A. That appeared before the grand jury in just that way.

By Mr. BLAIR:

Q. I understand you to say that there is no way in which these returns can be counted by the canvassing officer that does not elect Mr. Boles?—A. That is what I understand, and that is what the witnesses testified before the grand jury; the deputy secretary of state so testified. Now, Governor Clayton, on the 20th February following, issued a certificate, of which I have a copy, and a copy of which I understand has been laid before this committee. Would you like me to read the section of the enforcement act which it is claimed that Governor Clayton has violated?

Q. Yes; read it.—A. It is the twenty-second section, as follows:

"SEC. 22. *And be it further enacted*, That any officer of any election at which any Representative or Delegate in the Congress of the United States shall be voted for, whether such officer be appointed by or under any law or authority of the United States, or by or under any State, Territorial, district, or municipal law or authority, who shall neglect or refuse to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory thereof; or violate any duty so imposed, or knowingly do any act thereby unauthorized, with intent to affect any such election, or the result thereof; or fraudulently make any false certificate of the result of such election in regard to such Representative or Delegate; or withhold, conceal, or destroy any certificate of record so required by law; or aid, counsel, procure, or advise any voter, person, or officer to do any act by this or any of the preceding sections made a crime; or to omit to do any duty, the omission of which is by this or any of said sections made a crime, or attempt to do so, shall be deemed guilty of a crime, and shall be liable to prosecution and punishment therefor, as provided in the nineteenth section of this act for persons guilty of any of the crimes therein specified."

As the grand jury was then in session, the case was brought immediately before them, according to the practice in Arkansas in the State and national courts.

Q. How was the grand jury composed? There have been allegations that the grand jury was packed, in order to accomplish the result of this indictment.—A. I am entirely satisfied that there is not a word of truth in that. The grand jury were selected by commissioners appointed by the court, for the first time in the history of the court, I believe. Heretofore the marshal has always had the sole work of selecting the jury. There were three commissioners, and each of the three commissioners furnished a list of fifty names, and from the one hundred and fifty names thus furnished the selection of jurors was made. I have had official connection with six grand juries while in office as district attorney, and I think this was as competent a grand jury, as honest and efficient, as any I have ever had anything to do with. Judge Caldwell has so stated; has stated so often. He gave a number of the grand jurors, some twelve, I believe, who waited upon him at one time, a card to that effect, of which I understand you have a copy.

Q. Is this Judge Caldwell regarded as a friend of Governor Clayton? I believe he appoints the commissioners to select the grand jury?—A. Yes, sir. He is now considered a Clayton man, since he has done what he has done in connection with these things.

Q. You have spoken of a conversation which you had with Judge Clayton, and of some letter which he wrote to Governor Clayton withdrawing certain assurances he had previously given?—A. Yes, sir.

Q. What were those assurances?—A. All that I know about it is what Judge Caldwell told me. He said he had assured Governor Clayton that I was friendly toward him, and would do nothing unfairly against him. That is what Judge Caldwell stated to me as what he referred to by "assurances."

Q. When did he give those assurances, and under what circumstances did he give them?—A. He said he had given them to Governor Clayton, in Little Rock, at various times. He said he had met Governor Clayton on the street several times; that Governor Clayton had been at his house and had interviews with him when the matter of my probable conduct was discussed.

Q. Was Governor Clayton anticipating anything of this kind?—A. That, of course, I do not know.

Q. What did Judge Caldwell say about that?—A. He did not state that he understood that Governor Clayton was anticipating any prosecution; at least he did not so state to me.

Q. He did not?—A. No, sir.

Q. Why was he called upon to give any assurances in reference to your conduct?—A. I am not able to answer that question.

Q. You say the judge is regarded as a friend of Governor Clayton?—A. Yes, sir; he is now so considered very generally in the State.

Q. The gentlemen appointed in your place and in place of the marshal of the district were appointed upon the recommendation of Governor Clayton?—A. It is so understood.

Q. Upon your suspension you came on here and saw the President, did you not, you and Marshal Catterson?—A. Yes, sir.

Q. Did you lay all these facts before the President?—A. Yes, sir: we laid them before

the Attorney-General in the first instance, in the form of affidavits. Afterward we called upon the President, at Long Branch, and stated the case to him and referred him to the affidavits on file in the Attorney-General's Office. He assured us he would investigate the case, but said he would take no final action until his return to Washington.

Q. Did the President say he had suspended you from office on account of representations to him by Governor Clayton?—A. He said he had done it on account of the letter which Judge Caldwell had written to Governor Clayton, and which Governor Clayton had shown to him.

Q. The President is now in possession of all the facts in this case?—A. Yes, sir.

Q. Through the affidavits filed by yourself and Marshal Catterson?—A. Yes, sir; and a numbe of otherr affidavits.

Q. He knows precisely the grounds upon which Governor Clayton asked your removal from office?—A. Yes, sir; they were fully stated to him at our interview with him, and he was referred to the documents in the Attorney-General's Office.

Q. Was that letter of Judge Caldwell written on account of this indictment?—A. Yes, sir: it was so stated to me and to General Catterson by Judge Caldwell.

Q. Is Judge Caldwell familiar with all the facts? Does he know all the testimony in this case which was brought before the grand jury?—A. Yes, sir, he does.

Q. And upon that state of facts he wrote the letter which the President says caused your suspension?—A. Yes, sir. I am not aware that he was familiar with all the facts at the time he wrote the letter. I am not aware that he knew at that time what proof had been brought before the grand jury. But he knows now the state of facts and the law upon which the indictment was found.

Q. And the present acting district attorney and marshal were appointed at the solicitation of Governor Clayton?—A. Yes, sir.

Q. With that state of facts, with the judge and the officers of the court interested in supporting Clayton, do you think there is any possibility of his being convicted?—A. I should not like to express an opinion upon that point. The officers who have been appointed in place of General Catterson and myself are understood to be personal and political friends of Governor Clayton; are so generally understood. Governor Clayton's present organ, the Little Rock Republican, claims them as such. Major Harrington was on General Clayton's staff during the war; was known to be very intimate with him. Col. John A. Williams, a prominent lawyer and republican leader, of Pine Bluff, Ark., made an affidavit, which is on file with the Attorney-General, stating that the relations of Major Harrington to General Clayton at that time were peculiarly intimate. He uses very strong language in the affidavit, and says that Harrington is understood to be Clayton's serviceable tool.

Q. Well, sir, what is the general opinion in the State as to the result of this trial under present circumstances?—A. I think the people very generally have lost confidence in having a fair trial of the case. They understand that these changes were made because of that indictment, and for the purpose of defeating a conviction under it. That is a very general impression with the people of the State.

Q. Now, if the marshal and district attorney and the judge are inclined to do so, can they pack the jury in this case?—A. They have the same facilities that such officers have everywhere.

Q. They have the selection of the jury commissioners, have they not?—A. Yes, sir; the judge appoints the commissioners, one of whom is usually the marshal himself.

Q. And the commissioners select every juryman that is called?—A. Yes, sir; grand and petit.

Q. And make the panel?—A. Yes, sir.

Q. It was testified here on Saturday by Mr. Wheeler, the foreman of the grand jury, that immediately after the finding of this indictment the grand jury were discharged?—A. Yes, sir.

Q. Was it on account of the finding of this indictment that that grand jury were discharged?—A. That is the very general belief. I have reason to believe so, and do believe so.

Q. What are your reasons for so believing?—A. Because of Judge Caldwell's sudden change of front after the Clayton case was presented to the grand jury. Those election frauds that were perpetrated at the general election of November last excited a great deal of feeling and indignation throughout the State. When I returned to Little Rock, about the 1st of January—I was absent for two months previous, and at the time of the election—soon after I returned, Judge Caldwell called my particular attention to these election frauds, and urged me to prosecute them with all vigor. He advised me to commence the preliminary investigations before the commissioners in the cases of the principal parties connected with the frauds, and, among others, against Dwight P. Belden, who manipulated the frauds in Hot Springs County. I did so, and had the parties arrested and held to bail, they waiving an examination. Shortly before the April term of the court Judge Caldwell said to me, in the presence of several persons, that if he were in my place he would secure a thousand indictments for these election frauds at the coming term. He directed General Catterson, who was proposing to go down in the southern part of the State, to obtain from me blank subpœnas, and to subpœna every person that he saw who was connected with the election

frauds; and after the court opened, while Judge Dillon was still presiding (the circuit judge who presided the first week), Judge Underwood requested me to immediately present the Belden case to the grand jury, and after they had found the indictment to press it for trial at once, for he wished to try it while Judge Dillon was present. Several times during the term I inquired of him when he intended to discharge the grand jury, and each time he told me that they might take their time and continue in session until they had finished their business. At one time he called attention to the fact that he had no longer to hold court in Van Buren, since the division of the district, and therefore he was in no hurry to get away from Little Rock. And the week before the grand jury was discharged he told the foreman that they might sit all summer, if necessary, to sift these frauds to the bottom. In a conversation which General Catterson and I had with Judge Caldwell, after we learned that he was the cause of our suspension, he told us that General Edwards came to him, after he had been before the grand jury, and notified him that Clayton's case had been presented to the grand jury; and I know that he was aware of the fact that that case had been presented to the grand jury, for I, myself, told him the morning the grand jury were discharged, and before they were discharged. On the morning of Monday, the 15th of May, the day they were discharged, Judge Caldwell came to my office, and in quite an excited mood announced that he was going to discharge the grand jury immediately. He said he was satisfied they had become a political machine. I told him that I thought he was entirely mistaken; that I believed the grand jury were trying to do their duty faithfully; that I ought to know as much about their action as he, because I was with them the most of the time. I told him that a large number of cases were unfinished, not connected with the election at all. In fact the grand jury that morning presented forty indictments; and only fifteen indictments for election frauds were found that term, though there were some seventy-five indictments found in all by them. I urged that the grand jury needed more time to finish up their business; I called his attention to the fact that they were then in the midst of the investigation of the Pulaski County frauds; that a large number of witnesses had been examined, and the grand jury had had no opportunity to consider the cases. I saw that he was very determined to dismiss the grand jury speedily, and I urged him, therefore, to give me till the next morning—Tuesday morning. He left the office, and in about an hour, as he came back and passed my office-door, he called out that he would discharge the grand jury at 12 o'clock. The jurymen were called in at 12 o'clock, and, after presenting some indictments, the foreman of the grand jury was asked if there was any other business before the grand jury. He replied that there was; stated that twenty-seven witnesses had been examined in the Pulaski County cases, and called attention to other business before the grand jury, one case being that of a contumacious witness. Judge Caldwell replied that that business would have to go over the term; that the parties not indicted could be brought before the commissioners, and then dismissed the grand jury. General Catterson and I waited upon him to learn why he had recommended our removal. He told us that he felt very much mortified because of the indictment of Clayton; that when he looked over the batch of indictments that morning as he sat on the bench, before he left the pl ce, when he came to the Clayton indictment he took it out and showed it to the clerk and said, "There is a club which will cost Whipple his head."

By Mr. POOL:

Q. Did he say that in open court?—A. After the court adjourned; that is what the judge told me. He said that he was very angry and excited, and went immediately home and wrote this letter to Governor Clayton, marking it "confidential"; that he was so excited when he wrote it that he retained it until the next morning before he sent it.

By Mr. BLAIR:

Q. Did he ask any explanation from you before he sent that letter?—A. No, sir.

Q. Did he ask what testimony there was?—A. No, sir, he did not.

Q. What is the reputation of your successor in office; I mean as a lawyer, in point of ability and efficiency?—A. Judge Whytock, a prominent republican leader, and judge of the circuit including Pulaski County, and the principal circuit in the State, made affidavit, which is on file with the Attorney-General, that Major Harrington had never appeared in his court in any case, in any capacity, or for any purpose as an attorney. Major Harrington resided in Little Rock about three years. Mr. Kerott, the deputy clerk of the supreme court of the State, has made an affidavit, which is also on file with the Attorney-General, that Major Harrington has never appeared in any case before the supreme court; and the deputy clerk of the United States court has made affidavit, which is also on file with the Attorney-General, that Major Harrington has never appeared in the United States court, except in three or four cases of small misdemeanors.

Q. What was the motive of the governor in giving this certificate to a man who was not elected?—A. Of course it is very hard to tell what his motive was. It is generally understood that it was done in pursuance of a trade.

Q. Of a trade?—A. Yes, sir; that is the general understanding.

Q. What was the trade?—A. That the democratic members of the legislature should support him for the Senate of the United States.

Q. Did they do it?—A. Yes, sir; they did.

Q. And the governor carried out his part of the bargain?—A. Yes, sir; it seems very plain that he did that.

Q. You have spoken of certain election frauds; among others, of the Belden frauds in Hot Springs County?—A. Yes, sir.

Q. Give us a statement of that case.—A. Well, sir, Dwight P. Belden, who is Clayton's State senator, is accused of having manipulated the registration in Hot Springs County, and of having stuffed the ballot-boxes in Hot Springs precinct in the election. He is accused of having been the main instrument in striking about three hundred legal voters from the registration books, many of whom were republicans, and who were stricken off at his suggestion because he claimed that they would not vote for him. He is also accused of having added several hundred names to the registration books of that county, many of them straw names.

Mr. POOL. Are we to investigate frauds at the ballot-box in the several States; and, if so, are the accusations admissible of what this or that man may have done?

Mr. BLAIR. As I understand, he is indicted for those frauds.

The CHAIRMAN. I understand that the object of this testimony is to show that the laws are not properly administered in the State of Arkansas.

Mr. BLAIR. That is the purpose.

The CHAIRMAN. But so far as the question of the innocence or guilt of parties on trial is concerned, I do not think it is proper for us to go into any investigation of that. The only question is, whether the laws are or are not faithfully executed.

Mr. BLAIR. I think that nothing could be more pertinent to this inquiry, which we have been carrying on here so long, and during which we have been asking all sorts of questions, and of all sorts of people; yet, when a question is asked which brings home a violation of law to a man whose duty it is to execute the law, then there seems to be some trouble about it.

Mr. POOL. That is not exactly the question which I raised.

Mr. BLAIR. I think it is a much greater crime in an officer, the highest officer of the State, to assist in the perpetration of frauds and to countenance violations of law, than it is in an individual who is not charged with and sworn to secure the execution of the law.

The CHAIRMAN. I understand the question raised by Mr. Pool to be, whether it is advisable for us to go into the details of the charges and evidence against these persons who are indicted, or whether our inquiry ought rather to be confined to the fact that they have been indicted, and whether the law has been or is likely to be faithfully executed against those parties. The point, as I understand it, is, that we are not to make ourselves the tribunal to determine whether they are guilty or innocent, but that we are merely to inquire whether the proper tribunals there have tried them faithfully, or are likely to do so.

Mr. POOL. The witness says that a certain man has been charged with having done certain acts, which he is proceeding to state. The point I made is this: In the first place whether we should go into an investigation of the truth or falsity of that charge; and if we should do so, whether that truth or falsity can be proved simply by saying that it is said so and so. My point is whether, in the first place, we should make the inquiry, and in the second place, if this is the character of testimony we should take?

Mr. BLAIR. As I understand, we are charged with an investigation of affairs in the late insurrectionary States, as to the execution of the law, &c. Now I want, if I can, to bring home to certain high officials in the State of Arkansas, that they themselves have violated the law in the grossest manner; and I propose to bring it directly home to the man who was governor of the State of Arkansas.

Mr. POOL. But you are now inquiring in regard to a man who is not and has not been the governor of that State.

The CHAIRMAN. If General Blair will make offer of what testimony he desires to present, then there will be a question upon which the Chairman can rule.

Mr. BLAIR. I propose to connect Governor Clayton with the frauds committed by this man Belden; I propose to show that the election in that county, as well as in other counties in the State of Arkansas, was carried by means of the grossest frauds, and that the men who committed those frauds were the friends and acting in the interest of the then governor of the State; that they committed those frauds with his countenance, and in his interest. That is what I propose to show.

Mr. POOL. You mean that the frauds were committed with his complicity?

Mr. BLAIR. Yes.

The CHAIRMAN. So far as it is intended to show that any person has been guilty of a violation of the law in the State of Arkansas, I suppose, under the broad terms of our resolution, we would be authorized to inquire whether the law against that offense has been executed. But I do not take it that we are instructed to inquire whether every person who has been charged with any violation of law has been or ought to be convicted. However, as the joint committee has charged us with the examination of this witness, I think it probable that our shortest way is to take the testimony offered. Unless some specific question is presented, it is impossible for the chairman of this committee, as its organ, to make any decision for the committee to sustain or overrule.

Mr. BLAIR. The witness had already stated that Belden——

The CHAIRMAN. Put your question, and then, if objection is made to it, I will rule whether it is admissible or not.

Mr. POOL. I will withdraw any objection.

Mr. BLAIR. I want the witness to state to the committee the facts in connection with the indictment of Belden for frauds in the election in Hot Springs County.

The CHAIRMAN (to witness). Before you proceed to answer, I will say that in the opinion of the chairman it is proper, under the practice we have adopted in our investigation, for you to state the facts as they appeared before the grand jury which relate to the administration of the law, for that is what we are inquiring about.

Mr. BLAIR. That is what I want.

The CHAIRMAN (to witness). Confine yourself to that.

The WITNESS. The facts I have stated in the Belden case appeared before the grand jury. It further appeared that after the polls were closed in the Hot Springs precinct Belden, who was not an officer of election, but was a candidate for the State senate in the senatorial district including Hot Springs County, went into the polling-place, took the registration-book, and commenced calling off the names of parties who had not voted; that he called off about one hundred and fifty names from the registration-book, and as he called them off, his brother, who was one of the clerks of election, wrote them down on the poll-list and voted them.

By Mr. BLAIR:

Q. Voted them?—A. Yes, sir; that among them he voted "Abe Lincoln," "James Surrat," and several prominent citizens of Little Rock, D. P. Upham, John McClure, the chief justice of the State, and others. I have here a certified copy of the poll-list. Upon that state of facts Belden was indicted by the grand jury at the last April term.

Q. Was Belden a Republican?—A. Yes, sir.

Q. A friend of Clayton?—A. Yes, sir.

Q. Who appoints the officers of registration in your State?—A. They are appointed in the first instance by the governor and the senate, and the governor fills all vacancies that may afterward occur. I think nearly all the registrars of the State were appointed by the governor to fill vacancies; that is, nearly all who acted at the recent election.

Q. All of them were his appointees?—A. Yes, sir; that is my understanding.

Q. And the judges of election certified the polls as manipulated by Belden?—A. Yes, sir.

Q. Were they indicted also?—A. Yes, sir.

Q. They were all indicted?—A. Yes, sir.

Q. Did similar occurrences take place in many other counties of the State?—A. They did in Clark County. In one precinct in Clark County the poll-book showed that 1,148 men had voted, while the registration-book showed only about 800 men registered. The count kept at the polls showed that 825 men actually voted; and the census returns show that there are only about 800 voters in that precinct—that is, Caddo precinct, of Clark County.

By Mr. POOL:

Q. Do you mean the returns of the United States census?—A. Yes, sir.

Q. Of the last census?—A. Yes, sir; of the census taken last spring.

By Mr. BLAIR:

Q. Were there any other counties in the same predicament?—A. Those were the only counties we had an opportunity of investigating before the grand jury.

Q. Were there any others being investigated when the grand jury was discharged by Judge Caldwell?—A. Yes, sir; Pulaski County was being investigated, and twenty-seven witnesses had been examined.

Q. What condition of affairs in Pulaski County was disclosed by the investigation, so far as it went?—A. There were shown many instances of fraudulent registration. Parties who were not voters were awarded certificates by the registrars. There were many cases of parties registered in the wrong ward of the city or the wrong precinct in the county. For instance, parties would present themselves in the second ward to be registered, and would be registered in Big Rock Township. There were many instances of that kind where parties were registered in the wrong places.

Q. In whose interest were these frauds perpetrated?—A. In the interest of what was known as the Clayton party.

Q. For the purpose of electing men who would support him for Senator of the United States?—A. Yes, sir; and in many cases to defeat the Republican candidates.

Q. Who would not vote for him as Senator?—A. Who would not pledge themselves to support him for the United States Senate. That was the case in Pulaski County, where the Clayton vote was understood to have been thrown to secure the election of Democratic candidates for the legislature as against the Republican candidates, because the former were expected to support Clayton and the latter were not.

Q. Did they support him?—A. They did support him, yes, sir; they voted for him for United States Senator.

Q. As I understand, Governor Clayton was elected Senator, and declined to accept?—A. Yes, sir.

Q. What was his reason for declining to accept when first elected?—A. What reason did he assign?

Q. Yes.—A. The reason that he assigned was that the interests of the Republican party in Arkansas required that he should remain governor. But that was not the general understanding at all.

Q. What was the general understanding on the subject?—A. The general understanding was that he declined the election to the United States Senate because if he went to the Senate at that time he could not leave the government of the State in the hands of his friends.

Q. Who would have been governor if he had not declined to go to the Senate at that time?—A. The lieutenant-governor, James M. Johnson.

Q. Was he a friend of Clayton?—A. He was not a friend of Clayton at that time. He was a Republican.

Q. How did Clayton subsequently arrange that when elected the second time?—A. On the eve of the second election, I think the day before, Lieutenant-Governor Johnson resigned his office as lieutenant-governor, and was appointed secretary of state by Governor Clayton, Secretary White, the previous secretary, having resigned. Thereupon Senator Hadley was elected president *pro tempore* of the senate, and became acting governor of the State upon the election of Governor Clayton to the United States Senate.

Q. He is understood to be a friend of Clayton?—A. Governor Hadley?

Q. Yes.—A. Yes, sir; he is understood to be a Clayton man out and out.

Q. What do you suppose was the object of Governor Clayton in seeking to retain the control of the State in the hands of his particular friends in the Republican party, rather than let it go into the hands of any other Republicans? What interest had he in that?—A. Do you wish me to state what I think was the reason?

Q. Certainly I do.—A. I have reason to believe, and do believe, that his object was twofold: To maintain control of the State for future purposes, more particularly for the benefit of his friends, to whom he was under personal obligation for his election to the United States Senate, and also to prevent an investigation of the records of his administration.

Q. Now, that brings us to a point that I want to know something about. What particular transaction in the records of his administration was there that he did not care to have disclosed?—A. Well, sir, for instance, I think there was a great deal in connection with his management of the State aid to railroads.

Q. The legislature of the State had voted subsidies to certain railroads?—A. Yes, sir.

Q. What was the manner, or supposed to be the manner, in which the governor gave out those subsidies?—A. The State aid to railroads was generally awarded to personal friends of Governor Clayton, who were connected with railroads.

Q. Was it, in any instances, given to companies who had not complied with the requirements of the law?—A. That is understood to have been the case in several instances.

Q. In what instances in particular?—A. Well, sir, in the case of the Memphis and Little Rock Railroad, State aid for one hundred and twenty miles awarded, when only forty-five miles remained to be built and have since been built.

Q. He paid to the company the amount of aid they would have been entitled to had they built one hundred and twenty miles of road?—A. Yes, sir; $1,200,000.

Q. And they have built only forty-odd miles for which they are entitled to the State aid?—A. Yes, sir.

Q. And it is believed he has violated the law in this issue of State bonds over and above what the law authorized to be issued?—A. Yes, sir.

Q. Are there any other instances of similar violations of the law on the part of the governor?—A. Well, sir, in the case of what is known as the Little Rock, Pine Bluff and New Orleans Railroad, the president of which is James M. Lewis, commissioner of immigration for the State of Arkansas, and conspicuously known as an intimate personal friend of Governor Clayton, I think there has been $750,000 of State aid awarded to the road, besides $320,000 in levee bonds. For that there has been built about twelve miles of road, and I understand that the iron for those twelve miles has, for the most part, been since removed and put on other roads. I have reason to believe, and do believe, that Mr. Lewis has not spent more than $100,000 on the road.

Q. Was the issue of subsidy to that road in excess of what the law authorized the governor to issue?—A. So I understand.

Q. What amount did the law authorize to be issued for the twelve miles of finished road?—A. Fifteen thousand dollars a mile for the twelve miles.

Q. You spoke of the issue of levee bonds to that road. Under what law was the road allowed to have those levee bonds?—A. Well, sir, an act of the legislature authorized the issue of levee bonds to the amount of $3,000,000 for the erection of levees, and this road-bed is claimed for a levee. It is said that the actual cost of grading was not to exceed $2,500 a mile. Aid was allowed by the State to the amount of $10,000 a mile to roads endowed with a land grant, and $15,000 a mile to roads that had no Congressional aid.

Q. Did that road get bonds for their embankment under the railroad law and additional bonds under the levee law?—A. Yes, sir.

Q. It was, then, paid twice for the same embankment?—A. In that way; yes, sir. The road was the road known as the Mississippi, Ouachita and Red River Railroad, of which Thomas M. Bowen was president until recently. He was associate justice of the supreme court at the time, and is one of the managing men of the Clayton party.

Q. What is the present debt of the State of Arkansas?—A. The statutes authorize the increase of the debt to about $18,000,000. I think the funded debt is about $2,600,000. Then there is a debt in the shape of old outstanding bonds, which, with the principal and interest up to the first of last January, is about $1,600,000. Then aid to railroads is authorized to the amount of about $11,250,000, and levee bonds to the amount of $3,000,000.

The CHAIRMAN. As we have a subcommittee charged with the investigation of that subject, is it desirable that we should go into the matter now?

Mr. BLAIR. No, I do not know that I want to ask anything further about that.

By Mr. BLAIR:

Q. Are there any other transactions of a financial character on the part of Governor Clayton that he did not care to have disclosed by a hostile administration?—A. O, I am not fully posted in regard to that matter. I do not know as much about that as other parties in the State claim to know. I am not able to state about anything else.

Q. In speaking of this matter, are you giving what is the generally-received opinion of the reason for the action of the governor in refusing to accept his election to the United States Senate in the first instance?—A. Yes, sir; I think it is the generally-received opinion.

Q. That it was to prevent a disclosure of these transactions to which you have referred, as well as other transactions, that he declined that election?—A. I am satisfied that is the opinion of those who are most conversant with the facts, and I think it is the popular impression and belief.

Q. You have already stated that the election law places the appointment of all officers of registration and election in the hands of the governor. Are any class of persons in your State disfranchised under the law?—A. Yes, sir.

Q. What class?—A. Those who participated in the rebellion, or gave it aid and comfort, or who violated the rules of civilized warfare during the rebellion.

Q. Are all persons in your State disfranchised who participated in the rebellion, or gave aid and comfort to it?—A. I think all who voluntarily participated in the rebellion, or voluntarily gave it aid and comfort.

Q. No persons of that class are allowed to be registered or to vote?—A. No, sir; unless their disabilities have been removed. By one act of the legislature the disabilities of over two hundred persons were removed.

By the CHAIRMAN:

Q. Is that disfranchisement by a provision of your constitution?—A. Yes, sir.

Q. Which provision authorizes the legislature to remove it?—A. Yes, sir; by a vote of two-thirds of each house.

By Mr. BLAIR:

Q. Do you find that practically, under this disfranchising provision, the officers of registration can exclude almost any person they may see proper to exclude?—A. Well, I know that in many cases they have excluded the votes of legal voters.

Q. They have done so in many cases?—A. Yes, sir.

Q. And in other cases they can and do allow persons to vote who are disfranchised?—A. Yes, sir; that has been done.

By the CHAIRMAN:

Q. You went to Arkansas in 1868?—A. Yes, sir.

Q. How long had you been a member of the bar before that?—A. Nine years.

Q. Did you go to Arkansas as United States district attorney?—A. No, sir.

Q. When were you appointed United States district attorney?—A. I was appointed assistant United States district attorney soon after I went there—two or three weeks after.

Q. So far as you know, has there been any violation of law, any crime, committed in the State since that time for which there has not been adequate redress in some of the legal tribunals?—A. Yes, sir; the first year I was in Arkansas there were a great many such cases reported.

Q. That was in the year 1868?—A. Yes, sir.

Q. Were they of the class commonly known as Ku-Klux outrages?—A. Yes, sir.

Q. Have there been any such since the year 1868 that you are aware of?—A. I do not think there have been very many well-authenticated cases of active operations of the Ku-Klux organization since 1868.

Q. So far, then, as the general administration of justice in the State is concerned, have the rights of person and of property been maintained?—A. Yes, sir; I think they have been, very generally.

Q. Is that the condition of the State at the present time?—A. Yes, sir.

Q. Now, let me see if I understand the political condition of your State, out of which these

troubles seem to have arisen. There seem to be two contending divisions in the Republican party, one of which you call the Clayton party?—A. Yes, sir.

Q. What do you call the other?—A. The slang designations of the two parties there are "Minstrels" and "Brindle-tails." The "Minstrels" are understood to be the Clayton party.

Q. Who is understood to head the "Brindle-tails," as you call them?—A. I think Mr. Brooks is understood to be the leader of the "Brindle-tails."

Q. There was a majority of Republicans in the legislature that elected Governor Clayton to the United States Senate?—A. Yes, sir.

Q. And when these two divisions came into conflict in regard to electing a United States Senator, you say the Clayton men entered into a corrupt combination with the Democrats, by which the Democrats agreed to vote for Governor Clayton for the Senate of the United States, in consideration of Governor Clayton giving a certificate of election to the Democratic candidate for Congress in the third Congressional district of the State?—A. That is believed by many persons.

Q. You have already stated that here as the general belief in the State?—A. Yes, sir.

Q. Is that your belief?—A. Well, it is my belief that Clayton made some trade with the Democrats. Precisely what were the terms of the trade I would not undertake to say.

Q. You have already put it in that form in your testimony. I want to understand if that is your belief?—A. I do not think I put it in exactly that form.

Q. You stated that to be the general belief?—A. I think it is the general belief.

Q. Do you include yourself among those who entertain that belief?—A. Well, I have reason to believe it, and I know of no reason why it is not true.

Q. And then it is alleged that frauds were committed in the election of some members of the legislature?—A. Yes, sir.

Q. I desire, as of course everybody ought to desire, that everybody who was guilty of those frauds should be punished. Were those frauds the subject of investigation in any contest affecting the seats of those members in the State legislature?—A. Yes, sir; they were.

Q. Were they decided by the legislature?—A. Yes, sir; they were decided both in the house and in the senate.

Q. And some of those frauds were the same as those upon which you were proceeding to have indictments in the United States courts?—A. Yes, sir; the very same.

Q. The foundation of one of the indictments against Governor Clayton was the corrupt granting by him of a certificate of election to Mr. Edwards, in order to assist in securing the election of Governor Clayton to the Senate of the United States?—A. Yes, sir.

Q. Had you indictments prepared against anybody else for having either advised or counseled or conspired with Governor Clayton with reference to that certificate?—A. No, sir.

Q. You had no such indictments ready to send before the grand jury?—A. No, sir; no other persons were accused.

Q. Do I understand you to say that it is the practice in your State for the United States district attorney to send an indictment before the grand jury, simply upon a request made to him by any citizen, without his going before a United States commissioner and making oath to the commission of the offense?—A. Yes, sir; that is the practice. During the vacation of the court it is usual to bring important cases before a commissioner and have a preliminary examination. But that is not absolutely necessary, and not always done.

Q. I only want to ascertain the practice. In this case the indictment against Governor Clayton was sent by you before the grand jury upon the letter of Mr. Boles to you?—A. Yes, sir.

Q. There was no preliminary investigation before a United States commissioner?—A. No, sir; it was brought immediately before the grand jury, then in session.

Q. Were you identified with either one or the other contending divisions in the Republican party; and if so, with which one?—A. I was not in the State at the time of the election. I took no active part in the election, one way or the other. I was not identified in any way with either division, except in sympathy.

Q. With which division were you identified in sympathy?—A. My sympathies all along have been with what are known as the "Brindle-tails."

Q. You were opposed to the Clayton side of the question?—A. Yes, sir. That is, I understood the "Brindle-tails" to comprise the majority of the Republicans.

Q. Believing that this corrupt combination existed, as you have stated, why did you not also prepare indictments against the corrupt members of the legislature for aiding and procuring Governor Clayton to issue that certificate?—A. Because no basis of facts was furnished me. I have merely stated my belief. I do not undertake to state the facts.

Q. But believing as you say you did, would you not, under your practice, have been as fully justified in sending bills against them before the grand jury, and directing the grand jury to send for witnesses, as you were in the case of Governor Clayton?—A. No, sir; for the reason that when Judge Boles came to my office and called my attention to the facts in the case, he cited the proof, brought with him a perfect copy of the returns, and called my attention to the law.

Q. Then, up to the time of your removal, you had taken no step and made no preparation to indict anybody else than Governor Clayton for these offenses?—A. No, sir; you

will perceive that the twenty-second section of the enforcement act applies only to officers of election. Even if it did apply to other persons, I have had no facts furnished me to warrant proceeding against anybody else.

Q. I have only read the law casually; I suppose it would apply to any one who would aid in or counsel such an act. Thus far, then, you have proceeded against Governor Clayton, and the grand jury found a bill against him?—A. Yes, sir.

Q. They also found a bill againt Mr. Belden?—A. Yes, sir.

Q. And both of those bills are now pending?—A. Yes, sir.

Q. Now, so far as Governor Clayton is concerned, do you know upon what he grounds his justification for issuing that certificate?—A. No, sir; I have never been able to ascertain, and I have never seen any one who claimed to know.

Q. Of course, the investigation before the grand jury was only for the prosecution, as is usual?—A. Yes, sir.

Q. Under the law there was no opportunity to hear the defense?—A. All the witnesses examined were personal friends of Governor Clayton.

Q. Yes; but they were called for a specific purpose, and you have stated to us the evidence they gave?—A. Yes, sir.

Q. You yourself are not able to state to us what is the position taken by Governor Clayton in his defense, if he has taken any?—A. Yes, sir; I understand they make a technical defense.

Q. What is it?—A. They claim that he was not an officer of election under that law.

Q. I mean upon what ground does he justify the issuing of that certificate?—A. I have never been able to learn.

Q. Do you know whether he alleged any fraud in those returns, or any defect in the mode of certifying them by the proper officers, which would change the result?—A. No, sir; I know that his friends allege, generally, that in Pulaski County there was fraud upon the part of his Republican opponents, more especially in regard to the double polls to which I have referred. They claim that they were unlawfully seized.

Q. Then you are unable to tell us upon what ground he really does base his defense against this indictment?—A. No, sir; except upon the technical ground I have stated.

Q. When is that indictment to be tried?—A. At the October term.

Q. Of the district court or the circuit court?—A. The indictment is pending in the circuit court.

Q. So that it will be tried before Judge Caldwell and Judge Dillon?—A. It is understood that Judge Dillon will be present.

Q. When will the jury be summoned that will try the case?—A. They have already been summoned.

Q. By what officers?—A. The same that selected the jurors at the last term of the court, except that the marshal is different.

Q. Who are those officers?—A. The present marshal is Mr. Mills; the other commissioners are Mr. Pryor, of Washington, Hempstead County, and—well, Mr. S. H. Tucker is a different one; he resides at Little Rock.

Q. Have these jury commissioners been selected since the last term of the court?—A. Yes, sir; Mr. Pryor is the only one who was commissioner at the last term.

Q. By whom was Mr. Tucker appointed?—A. By Judge Caldwell.

Q. Are these jury commissioners appointed for a designated period, or are new appointments made at each term?—A. I don't think they are appointed for any particular term.

By Mr. POOL:

Q. Was Mr. Tucker appointed before or since the finding of this indictment?—A. Since.

By the CHAIRMAN:

Q. Was that appointment made by reason of the expiration of the term of the other commissioner?—A. It was owing to the creation of a new district, which placed the other commissioner out of the district.

Q. There was no removal of the former commissioner by the judge?—A. No, sir.

Q. Have you examined the list of jurors called for the next term?—A. Yes, sir; I have seen the list.

Q. Is there any evidence of partiality in the selection of those jurors?—A. No, sir; I do not see any. I think it is a very fair list of jurors.

Q. So that whether the law will be faithfully administered or not, is to be seen in the result of these trials?—A. Yes, sir.

Q. The removal of yourself and of Mr. Catterson has been attributed to a feeling against you on the part of Governor Clayton?—A. Yes, sir.

Q. Had Governor Clayton made any effort in that direction before this bill of indictment against him had been found?—A. Yes, sir.

Q. Before you had taken this step he had made an effort to have you removed?—A. Yes, sir.

Q. That was his intention before the bill was presented?—A. Yes, sir.

Q. Was I mistaken in understanding you to attribute his desire to have you removed to

the fact that you had presented this bill?—A. I stated that the President said our removal was based upon the letter of Judge Caldwell. I understand that repeated attempts had been made by Governor Clayton to obtain our removal. The Attorney-General telegraphed to Judge Caldwell, inquiring if there was any official misconduct on our part, and Judge Caldwell telegraphed back that there had been none, and that the public interest required our retention. That was after the finding of the Belden indictment, and prior to the Clayton indictment. I saw that reply of Judge Caldwell.

Q. There seems to have been some conversation between Governor Clayton and Judge Caldwell about the feeling you entertained toward Governor Clayton, and the judge assured him that you were friendly to him?—A. Yes, sir.

Q. That is the assurance that was given by Judge Caldwell?—A. Yes, sir.

Q. Not any assurance of his official conduct in the case?—A. No, sir.

Q. When Judge Caldwell called on you, at the time he said he was going to discharge the grand jury, he made the remark, so I understood you to say, that he believed the grand jury had become a political machine?—A. Yes, sir.

Q. Did he give any reason for that belief?—A. He did not. I went on to explain what the grand jury were doing, but he made no explanation whatever of his charge against them.

Q. What you have stated here as his reasons for discharging the grand jury are your own inference, based entirely upon the facts you have stated?—A. Yes, sir.

Q. The judge did not say those were his reasons for discharging the grand jury?—A. No, sir.

Q. Did he not, in an interview with some one, probably with Mr. Wheeler, the foreman of the grand jury, expressly disavow any such reason?—A. Yes, sir; I think he did.

Q. Since your removal you have felt disposed, have you not, to be somewhat more active in your proceedings against Governor Clayton than you were before; that is, you were opposed to him before, and I suppose your removal has added a little to your feeling of hostility to him?—A. I do not know that I have any personal feeling against Governor Clayton.

Q. I do not refer to personal feeling exactly.—A. I have my opinion of his official acts and conduct.

Q. If he has done wrong, of course he should be punished.—A. I believe I did nothing more than my duty.

Q. You believed you were discharging your duty?—A. Yes, sir; I believe I should not have discharged my duty if I had not presented that case to the grand jury.

Q. You believe the former determination of Governor Clayton to have you removed was made stronger by your action in that case?—A. Yes, sir. I think his hostility to me arose from the fact that the election frauds were being prosecuted. I think he objected to have the Belden frauds prosecuted.

Q. And in speaking about the opinion entertained about these proceedings have you not been giving the opinion entertained by that portion of the community who are opposed to Governor Clayton?—A. Yes, sir; and of others. In my judgment, that portion opposed to Governor Clayton comprises a large portion of the community.

Q. That may be. But do you wish it to be understood that there are not two sides to this question in Arkansas?—A. I wish to state that that is the very general belief; that the only exceptions are the few friends of Governor Clayton.

Q. And which party is right as to his guilt or innocence is to be determined by this trial?—A. It is to be determined by the trial for the purpose of the trial.

Q. You do not suppose that the jury, which you say is composed of fair men, is likely to be so corrupt as to do injustice upon the trial?—A. Not any more than average juries are. I think it is fully up to the average of juries.

Q. And you do not suppose that Judge Dillon will be a party to any arrangement to acquit Governor Clayton of anything for which he ought to be punished?—A. No, sir.

Q. And your opinion of Judge Caldwell as to whether he will or will not be influenced improperly, is based upon the facts you have given us here in reference to this case?—A. Yes, sir.

Q. I infer from what you have said, that you look upon him as a friend of Governor Clayton?—A. Yes, sir; he is now.

Q. Am I to understand from your qualification that he was opposed to him before?—A. No, sir; he was neutral before.

Q. For some reason or other he came to the conclusion that that grand jury was a political machine?—A. He announced that opinion.

Q. He announced it to you?—A. Yes, sir.

Q. And you thought otherwise?—A. Yes, sir; most decidedly. I thought it was a very fair-minded jury.

Q. Now. Judge Caldwell having disavowed the motive attributed to him by you for discharging that grand jury, do you wish us to understand that you say that disavowal is not to be believed, and that he was influenced by his feelings in favor of Governor Clayton?—A. I believe he is influenced by his feelings in favor of Governor Clayton; I have reason to believe it, and do believe it. I omitted to state that he subsequently wrote a letter to General

Grant—it was quite a long letter, and is on file with the Attorney-General—in which he stated that I was of the impression that his former letter had had some influence in working my removal; that I had offered to lay before him facts in the case; that parties favorable to my removal had also proposed to furnish him evidence; that he did not desire to look into the facts at all, but wished to keep out of the matter; and he therefore wished to have his letter withdrawn from the consideration of the President, as he did not intend to make any recommendation for my removal.

Q. The question whether your suspension shall continue is still pending before the President?—A. Yes, sir.

Q. The time has not arrived when he said he would determine that question?—A. No, sir.

Q. And those recommendations have been laid before him for the purpose of getting him to reverse his action?—A. Yes, sir.

Q. Your attention has been called to some proceedings under the laws of the State in reference to State aid to railroads. Do those laws provide for commissioners to determine how much track has been graded?—A. Yes, sir.

Q. Can the governor issue bonds, or give this aid in whatever form it is to be given to these companies, until the commissioners have examined and certified to him?—A. No, sir; I think he cannot.

Q. Have such certificates been made to him by the commissioners?—A. I am not able to state: but I presume they have been.

Q. You have said, if I remember correctly your testimony, that the governor has issued this aid to railroads in your State in violation of the law?—A. I did not say it was in violation of the law; I stated how it had been done.

Q. I understood you to say that the commissioners had certified to that distance having been graded.—A. I do not think I said anything about the commissioners.

Q. Who are the commissioners?—A. I think the secretary of state, the State treasurer and the governor, were the three commissioners.

Q. To determine how much had been graded?—A. I would not like to state about that.

Q. Were they the same commissioners under all the laws granting State aid?—A. Yes, sir; under all the railroad laws.

Q. Is that a general law of the State?—A. Yes, sir.

Q. So that the issuing of the aid, whatever it was, is upon the evidence required by the statute?—A. I suppose so; I do not know. I have not examined to see whether or not the requisite evidence was furnished.

Q. You cannot say this aid was illegally issued?—A. I can only state what I have stated. I believe it to have been illegally issued.

Q. For instance, you say that one hundred and twenty miles of road was to be graded, and that aid was issued for that distance, while only forty-five miles have actually been graded?—A. Yes, sir.

Q. Do I understand you to say that these commissioners have certified that one hundred and twenty miles of road have been graded, when that number of miles of road have not been graded?—A. I do not know about that.

Q. Do you know whether they have or not so certified?—A. I know what the fact is about the road.

Q. Do you know whether or not it is graded for that distance?—A. Yes, sir. I know the fact, for I have been over the road.

Q. I would like to know who the commissioners are.—A. Very well.

By Mr. BLAIR:

Q. The governor is one of them?—A. Yes, sir.

Q. And in any event he would know that the law has not been complied with?—A. Yes, sir.

By the CHAIRMAN:

Q. You say there are three commissioners?—A. I believe there are three.

Q. And without any knowledge of how many there were, or who they are, you make these statements here?—A. I make the statements I do make.

Q. You state as a lawyer, a member of the bar, that there is a law requiring the commissioners to examine and certify before aid can be given?—A. I believe the commissioners award State aid. I am not able to state upon what evidence they award it.

Q. Do you recollect whether, in your testimony-in-chief, you placed this whole matter of aid upon the governor, without reference to the other commissioners?—A. I do not think I did. I do not think anything was asked about Governor Clayton, particularly in reference to aid to railroads.

By Mr. POOL:

Q. When you called upon the President, in reference to your removal, you say you laid these facts before him?—A. Yes, sir, briefly.

Q. Did the President tell you that he had not heard the facts before?—A. He did not tell me that he had not heard them before. I can state from hearsay what he subsequently said, if that is desired.

Q. Very well, you may state it.—A. I learned and am reliably informed that he subsequently said he would not have made the removals if he had known the facts.

Q. The facts as presented by yourself?—A. Yes, sir.

Q. He told you he would take the matter under consideration?—A. Yes, sir.

Q. There seems to be two factions in the Republican party in Arkansas?—A. Yes, sir.

Q. You belong to the faction adverse to Governor Clayton?—A. Yes, sir; I am so understood.

Q. And he had been exerting himself to have you removed, previous to this trouble about the indictment?—A. Yes, sir.

Q. And the Attorney-General had telegraphed to Judge Caldwell, and upon the receipt of his answer you were still retained in office?—A. Yes, sir.

Q. Is it not clear that your removal was because of what Judge Caldwell subsequently stated to the executive authorities upon the subject?—A. Yes, sir; it is entirely clear to my mind.

Q. Do you know why Judge Caldwell changed his mind?—A. Before he wrote his first letter?

Q. Yes. Why did he change his mind?—A. I believe it was on account of the presentation of the Clayton case to the grand jury.

Q. And you attribute your removal to his letter?—A. Yes sir; I do not think we would have been removed without that letter.

Q. You think the President would not have removed you upon the representations of Governor Clayton alone, without that letter from Judge Caldwell?—A. No, sir; I do not think he would.

Q. The judge had given an assurance to Governor Clayton that you would not do anything unfair against him?—A. The judge said he had given him that assurance.

Q. After the finding of this indictment, or about the time it was found, after the presentation of the case to the grand jury, he wrote a letter to Governor Clayton withdrawing that assurance?—A. Yes, sir. He says that was the assurance to which he referred in that letter.

Q. You think the judge, then, was under the impression that you were disposed to act unfairly toward Governor Clayton?—A. He says he was under that impression.

Q. Do you know whether Governor Clayton issued this certificate to Mr. Edwards, notwithstanding the face of the record, upon the ground that the returns were irregular; that there were frauds committed by the returning-officers themselves, so as to make them no legal returns at all?—A. I have no reason to think that was his reason for issuing the certificate as he did.

Q. You went into no examination before the grand jury as to the legality and formality of those returns under the law?—A. No, sir.

Q. And you went into no investigation as to any fraud perpetrated by the returning-officers?—A. No, sir; not in connection with this case. You will remember that the certificate from Governor Clayton to General Edwards states that it appears from the returns on file in the office of the secretary of state that he was elected.

Q. The law required the governor to issue his certificate to the person who had received the largest number of votes?—A. Yes, sir.

Q. According to the certified returns?—A. Yes, sir.

Q. Suppose that the governor should know that a certain return, as certified, was fraudulent and void, in your opinion would it be his duty to reckon in that return?—A. I do not think that, under the laws of the State, he would have any authority to set aside a return that was fair upon its face.

Q. However fraudulent or void it might be?—A. Yes, sir. I think that under the statute he is obliged to accept the showing, when the secretary of state casts up and arranges the returns in his presence.

Q. Are you sure that the parties who sent in some of these returns were officers of election?—A. I am not sure.

Q. Is it not alleged that they were not?—A. It is so alleged.

Q. The governor has the appointment of such officers?—A. Yes, sir.

Q. Suppose that the governor should know that the man whose name is signed to one of these returns was not his appointee, would it be his duty to count that return notwithstanding?—A. Perhaps I would qualify that. The returns in the office of the secretary of state do not show the names of any returning-officers of precincts. Those officers make returns to the clerks of their respective counties, and the county clerks make an abstract of the returns and forward them to the secretary of state. In those abstracts the names of the immediate officers of election are not given, as you will see by an examination of a copy of the returns which I have here. I understand that the duty of the governor is simply ministerial; that he has no discretion or power to disregard returns fair upon their face.

Q. And that is the question involved in the case?—A. I do not know that that question has been raised; it might be raised.

Q. If the governor certified differently from what the record showed upon its face, and he has any reason for doing so, it must be a reason outside of the record itself?—A. Yes, sir.

Q. And, therefore, the question arises whether he could look to anything outside of the

record to influence his action?—A. Yes, sir; of course that question would arise if that point were raised.

Q. If it should turn out that he did have a right to look outside of that record, and that the evidence showed that all the returns should not be counted, that would make a fair case for him, would it not?—A. Yes, sir; if he has authority to do that.

Q. You say the judge told you at the beginning of the term that he wanted a thousand indictments found?—A. Yes, sir; he used that language. Probably he did not mean to be understood literally.

Q. You found no bills of indictment against any parties except those connected with the Clayton faction?—A. I will state how that was. There were no charges preferred against anti-Clayton men, except for frauds in Pulaski County. The Pulaski County cases were under investigation at the time the grand jury were discharged, and a large number of witnesses had been examined. What the grand jury would have found upon a full examination of the case I do not know.

Q. But, in point of fact, up to that time there had been no bill of indictment found against any of the anti-Clayton party for these frauds?—A. No, sir.

Q. And at that particular point of time you had found several against persons of the Clayton party?—A. Yes, sir.

Q. How many?—A. Perhaps fifteen at the time the grand jury were discharged.

Q. You wound up by finding a bill against Governor Clayton himself?—A. Yes, sir.

Q. And at that point the judge discharged the grand jury?—A. Yes, sir.

Q. Saying that it appeared to him that they had become a political machine?—A. Yes, sir. I would like to state that in an interview which General Catterson and I had with Judge Caldwell, after we had been suspended, Judge Caldwell said that he had made no charges against General Catterson; that he had always considered him an efficient and faithful marshal, as good a marshal as he had ever had in his court; and he also said in regard to myself that I had always been very efficient and very faithful, and that he never had any reason to believe that I was guilty of any undue zeal in the exercise of my office in any case except this Clayton case; and he said that in that case he was satisfied that if I had showed any undue zeal it was after being satisfied that I was in the line of my duty; that I had unconsciously experienced the effect of this undue interest.

Q. I am not speaking of how it appeared to the judge. But what possible good could it do Governor Clayton to discharge the grand jury after the bill was found against him?—A. The bill was not found at the time the judge announced his intention to discharge the grand jury.

Q. The bill was presented before the grand jury was discharged?—A. Yes, sir. But I suppose that Judge Caldwell did not know that the bill would be presented until he had called in the grand jury to discharge them.

By Mr. BLAIR:

Q. You think his determination to discharge them was with a view to prevent their finding such a bill?—A. I do firmly believe it.

By Mr. POOL:

Q. They were not discharged because the bill had been found?—A. No, sir; but I think it was because the Clayton case had been presented to them.

Q. If it should turn out that there were such frauds in these returns from officers belonging to the faction in opposition to Governor Clayton as to vitiate the returns, and the governor declined to recognize them because of those frauds, the fact would be that he was indicted because he refused to recognize fraudulent returns?—A. Yes, sir; if that state of facts should appear; but I do not think that would be a legal protection to him.

Q. You mean in technicality of law?—A. Yes, sir.

Q. You do not mean to say it would not exculpate him from moral guilt?—A. Well, I think he would stand guilty of a violation of law.

Q. You have said that it was understood in the State that there was a sort of trade between the governor and some of the Democratic members of the legislature?—A. Yes, sir.

Q. And that it was in pursuance of that trade, carrying out the governor's part of the bargain made with the Democratic members of the legislature, that this fraudulent issue of a certificate to Mr. Edwards took place?—A. Yes, sir.

Q. Was there any investigation by the grand jury against those Democratic members of the legislature who were parties to that fraud?—A. No, sir. As I have already stated, no facts have ever been presented to me officially upon which I could take action. I am not able now to state any definite facts to warrant that belief; I simply state that was the general belief.

Q. If they procured Governor Clayton to violate the enforcement act in this respect, were they not amenable and liable to indictment?—A. That is a question of law I have not examined carefully.

By the CHAIRMAN:

Q. Just in this connection, as the questions I put to you were based upon a wrong section, let me call your attention to the nineteenth section of that act, as follows:

"SEC. 19. *And be it further enacted*, That if at any election for Representative or Delegate in the Congress of the United States any person shall knowingly personate and vote, or attempt to vote in the name or any other person, whether living, dead, or fictitious; or vote more than once at the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote without having a lawful right to vote; or do any unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and willfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution."

A. I think that section would cover their case.

Q. And make any member of the legislature of either party liable to indictment who consented to that arrangement?—A. I think it would.

Q. I think it would be a healthy proceeding, whether the parties were Republicans or Democrats, to lay the matter before the grand jury.—A. As I say, no state of facts has ever been presented to me pointing to any particular persons as having been connected with that fraudulent issue of a certificate. This case of Clayton was not presented at all until just before the grand jury was discharged; the case was presented to them on Thursday and they were discharged on the following Monday.

By Mr. POOL:

Q. The grand jury had then been in session some weeks?—A. Yes, sir; some six weeks, and a large number of witnesses, some seven hundred, had been subpœnaed. I had purposely arranged not to take up the Pulaski County cases until after the other cases had been disposed of, supposing we would have plenty of time, as I was assured by the judge, all along, we would have.

Q. And during the six weeks the grand jury had been in session there had been no investigation of fraud upon the part of any one belonging to the faction opposed to Governor Clayton?—A. Yes, sir; I said we were in the midst of an investigation of the alleged frauds in Pulaski County.

Q. But no indictments for those frauds had been found?—A. No, sir.

Q. No indictment had been found against any anti-Clayton man in any county?—A. There was no charge against any anti-Clayton man except in Pulaski County, and the only charge there was the one to which I have referred—that they had unlawfully taken possession of the polls in those three precincts. I do not think it was charged that any violence was used. On the other hand, the anti-Clayton men claimed that an exigency had arisen, when, under the statute, it was proper for the voters to elect officers of election. They went on and elected officers of election, and held one poll; the others were held by Clayton men.

Q. I understand, then, that you brought to the attention of the grand jury such cases as were brought to your attention?—A. Yes, sir; not only that, I sought for all the light I could get. I went to a number of persons commonly known as Clayton men; I went to J. R. Montgomery, also to the chief justice of the State, and to the president of the board of registration of Pulaski County, and asked each of them to furnish me a list of witnesses.

Q. You were willing to prosecute anti-Clayton men as well as Clayton men?—A. Yes, sir. I have been asked with which side I was identified, and I said my sympathies were with the "Brindle-tails," simply because I believed they were mainly right. But I had intended to make a thorough and impartial examination into these frauds, and let the ax fall on either side where the offense was. I believe all my acts will show that I was moved by that disposition.

Q. And if you had had any intimation of fraud committed by members of your faction, you would have brought it to the attention of the grand jury as promptly as any fraud by the other faction?—A. Yes, sir.

Q Do you think that, in point of fact, frauds were committed by both factions?—A. It is a question of law whether the operations of the "Brindle-tails" were in conformity to law. I believe that whatever they did was done for the purpose of protecting themselves against frauds

which they feared. I believe they anticipated the state of things which actually took place in Hot Springs and Clark Counties, and their object was to protect themselves against that state of things. Pulaski County is largely Republican, by some 2,500 majority. There are a great many colored men in that county, and it has always gone Republican, at least ever since reconstruction. But in the last legislature, owing to the manipulations of Clayton men, Democrats were seated as representatives from Pulaski County. I have not designed that my sympathies should have anything to do with my official action, and I do not think they have had. I never was actually identified with either wing of the party prior to the election. I was out of the State at the time of the election; I had nothing to do with the caucuses, ward meetings, or other political meetings. I tried to keep aloof, and to act independently.

Q. And up to that time, as I understand, Judge Caldwell pursued the same course?—A. Judge Caldwell was understood to act independently.

Q. Had there been any official act of his, before that time, which you think was unfair or improper?—A. No, sir, not that I know of.

Q. He was generally esteemed an upright and fair judge?—A. Yes, sir; he stood very high, indeed, up to the time of the dismissal of the grand jury.

Q. He was regarded as a man of elevated character?—A. Yes, sir, and of marked ability as a judge. He has been a personal friend of mine; I have lived in his family for six months.

Q. You said that Lieutenant-Governor Johnson was now a friend of Governor Clayton?—A. Yes, sir.

Q. Do you mean to intimate that at one time he was not friendly to Governor Clayton?—A. Yes, sir. I mean to state that at one time he was the representative of the anti-Clayton party. Suddenly he resigned his place, and became secretary of state by Governor Clayton's appointment, which paved the way for the election of Governor Clayton to the United States Senate. His impeachment was attempted in the legislature by the Clayton men. The movement was sprung upon him one Monday morning, without notice or warning, and it came within one vote of being successful. At the same time a *quo warranto* case was pending in the supreme court.

Q. A *quo warranto* issued against Johnson?—A. Yes, sir; an attempt was made to oust him in that way.

Q. Upon what ground?—A. Upon the ground that he had not qualified as lieutenant-governor within the time prescribed by the constitution. The ordinance of the constitution provided that all officers elected under the constitution should qualify within a certain specified time; fifteen days, I think it was.

Q. Is he a man of high personal character?—A. Yes, sir; he is a man who has always stood very well.

Q. You say that he is now a friend of Governor Clayton?—A. Yes, sir; that is understood to have been a sell-out to Governor Clayton.

Q. He has been a friend of Governor Clayton since he was made secretary of state by him?—A. Yes, sir, so regarded.

Q. You think the object of Governor Clayton in going through that proceeding, before he accepted a seat in the United States Senate, was to cover up the frauds of his administration while governor?—A. Yes, sir, I think so; I think that is the general impression.

Q. That would make Lieutenant-Governor Johnson a party to that arrangement?—A. That would seem to be the practical effect of his conduct.

Q. He enabled Governor Clayton to get the State government in hand, so far as the executive part of it was concerned, so as to cover up those frauds, and has since been a friend of Governor Clayton?—A. Yes, sir.

Q. Have the characters of Judge Caldwell and Lieutenant-Governor Johnson suffered in the estimation of the people by reason of these transactions?—A. Very materially. Judge Caldwell, especially, has fallen from a high elevation in the estimation of the people of Arkansas.

Q. Do you mean of the "Brindle-tails," or of the "Minstrels"?—A. I mean of the people generally.

Q. The "Minstrels," as well as others?—A. I regard the "Minstrels" as being a very small part of the people.

Q. How about the Democrats?—A. The Democrats denounce Judge Caldwell in unmeasured terms for his conduct.

Q. Those who made the bargain about this certificate?—A. I do not know who they were.

Q. Is not the record of all these transactions, in relation to issuing bonds to railroads, &c., an open public record of the State?—A. I presume it is. I have never examined especially.

Q. How could the present executive officers of the State prevent an examination and inspection of what has been done?—A. I do not know what the records would show.

Q. Could they prevent an examination of the records by any citizen of the State who should demand an opportunity to make such examination?—A. I think they could ascertain some of the more obvious facts.

Q. In point of fact, since the present executive officers have been in office, has any one

asked to look into that matter and been refused?—A. I have not heard; I think it would be idle to ask it.

Q. Has not the legislature the right to call for those records?—A. Yes, sir.

Q. Has the legislature taken any such action?—A. They impeached Governor Clayton.

Q. Did they call for those records?—A. I am not aware that they did.

Q. Did the legislature impeach Governor Clayton since he was elected Senator?—A. After his first election as Senator. The same legislature which elected him Senator afterwards impeached him.

Q. Did they afterwards again elect him to the Senate?—A. Yes, sir.

Q. After his impeachment?—A. Yes, sir.

Q. Was he tried upon that impeachment?—A. No, sir; the impeachment was disposed of without a trial.

Q. You mean to say that in the first place the legislature elected him to the United States Senate?—A. Yes, sir.

Q. And in the second place the lower branch of the legislature preferred to the senate branch articles of impeachment against Governor Clayton?—A. Yes, sir.

Q. Then the impeachment proceeding was stopped?—A. Yes, sir; it was hushed up. A majority of the senate absconded for eight days, to prevent the presentation of the articles of impeachment.

Q. They would not receive the articles of impeachment?—A. They could not be found.

Q. And afterward that same legislature again elected Governor Clayton to the United States Senate?—A. Yes, sir.

Q. Was he re-elected upon the first ballot?—A. Yes, sir; by a small majority.

Q. Then he received a majority of each branch of the legislature?—A. A majority on joint ballot.

Q. Was he not elected upon the first ballot when each branch voted separately?—A. Yes, sir; he received a majority of each house.

Q. Then he received a majority of votes for the position of United States Senator in the very house that had some time previously preferred articles of impeachment against him?—A. Yes, sir.

Q. You say there is a board of commissioners whose duty it is to examine whether the work required by the railroad law has been performed, to entitle the corporation to draw bonds?—A. There is a board of commissioners of award for the purpose of awarding State aid.

Q. How?—A. To the different railroads. They would select the roads to which the aid should be given, and I suppose would award it from time to time.

Q. Perhaps I misunderstood you as saying that the commissionees were to examine whether the work had been done, which was required by the act, to entitle them to bonds?—A. I am not able to state precisely what is their duty. A reference to the statute would very soon show I have not examined the statutes especially upon that point.

Q. You would not say that the governor of the State was on such a board as that; to report to himself as to whether the work had been done?—A. I think he is a member of the board.

Q. Of a board to parcel out these bonds to the various railroads?—A. Yes, sir.

Q. Do you know whether it was a board charged with the duty of examining the work done on the roads?—A. I do not.

Q. Your recollection is not clear as to how the statute is on that point?—A. No, sir.

By Mr. BLAIR:

Q. In regard to this question of the overissue by the governor of bonds to the railroads, if Lieutenant-Governor Johnson had succeeded Governor Clayton as governor of the State, he would have had it in his power to have ordered a prosecution for that overissue of bonds?—A. I supppose an opportunity would have been afforded to ascertain the real state of the case, and the facts would have been brought to light, so that a prosecution could have been commenced.

Q. And it was to prevent his being succeeded in the office of governor by a person inimical to him, who would have that control, that Governor Clayton declined to accept the position of United States Senator when first elected?—A. Yes, sir; I believe that to be o n of the main reasons; I think that is the general belief.

Q. What was the ground of impeachment voted by the house against Governor Clay ton?—A. Corrupt conduct in office; high crimes and misdemeanors.

Q. What were the specifications?—A. I am not able to state now precisely what they were.

Q. Did they refer to this over-issue of bonds?—A. My recollection is that that was one of the charges. They also referred to his conduct in attempting to remove Lieutenant Governor Johnson, and to his corrupt management of the elections last November. I think those were the principal specifications.

Q. The specifications included the election frauds?—A. Yes, sir.

Q. And implicated him in them?—A. Yes, sir.

Q. In the particular in regard to which he was subsequently indicted?—A. I could not state definitely about that.

Q. Now, in point of fact, you say that the indictments found were all of Clayton men, who were implicated in frauds in the election?—A. Yes, sir; none others had anything to do with the management of the election.

Q. I was going to ask if, in point of fact, Governor Clayton did appoint all the registrars and officers of election, with the exception of some in Pulaski County, who qualified under your statute?—A. Yes, sir.

Q. The great number of election and registration officers were appointed by Clayton, as governor of the State?—A. Yes, sir; and the most of them were appointed by him alone to fill vacancies.

Q. And they had it in their power to prevent frauds being committed by any other parties?—A. Yes, sir; they had the entire control of the registration and of the returns.

Q. And it was those registration and election officers who were charged with frauds in the election?—A. Yes, sir.

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## BOLES vs. EDWARDS.—THIRD CONGRESSIONAL DISTRICT OF ARKANSAS.

The evidence submitted by the respondent was based upon a report of a joint select committee appointed by the senate and house of representatives of Arkansas to investigate election frauds, and a decision of the supreme court of Arkansas. Neither of these documents were regarded as evidence by the committee or entitled to consideration in disposing of the case, and the committee unanimously decided that Hon. Thomas Boles was entitled to the seat.

The House unanimously adopted the report, February 9, 1872.

Thomas Boles was sworn in.

Authorities referred to: Howard *et al. vs.* McDiarmid, Arkansas report.

### January 30, 1872.—Mr. G. W. Hazelton, from the Committee of Elections, made the following report:

The question submitted to the committee in this case is a very simple one, and the committee are unanimous in the conclusion reached upon it.

No evidence whatever is presented by the respondent as to any irregularities or pretended irregularities outside of Pulaski County; nor were any allegations of such irregularities made by respondent in his oral argument before committee.

The respondent did, however, present to the committee and read in evidence, for what they might be deemed worth, as bearing upon the result of the vote in Pulaski County, a report of a "joint" select committee appointed by the senate and house of representatives of Arkansas to investigate election frauds in Pulaski County; and a decision of the supreme court of Arkansas in a proceeding on the part of Howard *et al. vs.* McDiarmid, county clerk of Pulaski County, "praying for a *mandamus* against said McDiarmid to compel him to certify certain election-returns to the secretary of state."

It seems hardly necessary to say that neither of these documents were regarded as evidence by the committee, or entitled to consideration in disposing of the case.

The legislative report is in no sense a judicial determination. It would not be recognized as evidence even in any court of justice. It is simply the views of certain members of the legislature of Arkansas upon the question submitted to them by the legislature.

But even if it were entitled to rank as a judicial determination, it could not be evidence in this case—

First. Because it is not a decision in a proceeding between these parties. They had no hand in creating the committee, and cannot be affected by its acts; and

Second. The House being made by the Constitution the judge of the election returns and qualifications of its members, cannot delegate its authority to some other tribunal, and discharge by proxy a solemn duty which the Constitution imposes on the House.

For like reasons the decision of the supreme court of Arkansas cannot be regarded as evidence.

The case is, therefore, left to stand on the proofs submitted by the contestant.

Outside of Pulaski County the contestant has a majority of two over the respondent.

In Pulaski County the majority for contestant is two thousand one hundred and fifty-one, making a total majority for contestant in the district of two thousand one hundred and fifty-three.

It may not be improper to remark that upon the theory of the respondent, that the documents above mentioned are evidence, and giving him the full benefit of them as testimony, the result is not changed. The contestant is elected upon either one of the following theories:

First. Upon throwing out the entire vote of Pulaski County.

Second. Upon throwing out the vote cast at the so-called Boles polls, in the first and third wards of the city of Little Rock and the precinct of Eagle, and accepting the vote cast at the so-called Edwards polls in accordance with what it is claimed the supreme court of Arkansas has decided.

Third. Upon throwing out, in addition to the Boles vote last above specified, the votes of the four election precincts of Gray, Badgett, Eastman, and Campbell, as recommended in said legislative report.

Fourth. Upon throwing out all of the votes specified in the last statement or hypothesis, and taking in the vote only cast at the so-called Edwards polls, in the First and Third wards of Little Rock and the precinct of Eagle.

So that it makes no difference whatever to the sitting member whether the committee take one view or another of the "evidence" submitted by him. The contestant was elected and is entitled to the seat in this House as the member from the third district of the State of Arkansas in the Forty-second Congress.

The committee have further instructed the undersigned to say that the testimony taken before the joint committee to investigate the affairs of the South, and referred to this committee on the 9th day of the present month, has been examined, and that in the judgment of the committee it contains nothing reflecting on the character of any member of the House; and the committee ask to be discharged from the further consideration of such testimony.

The committee ask the adoption of the following resolution:

*Resolved*, That Thomas Boles is entitled to the seat in the Forty-second Congress as Representative from the third district of the State of Arkansas now occupied by John Edwards.

## JOHN CESSNA vs. BENJAMIN F. MEYERS.—SIXTEENTH CONGRESSIONAL DISTRICT OF PENNSYLVANIA.

Relating to the qualification of voters as to residence when temporarily employed in the construction of a railroad.

Paupers committed to the almshouse from any other district than that where they voted, are not entitled to vote therein.

To gain a residence a person must actually join a community, laying aside his former residence. Where the laws of the State levy an assessment for taxes as a condition of voting, and it was disregarded by the election officers, it was held that the vote should not be counted.

The House adopted the report, March 12, 1872.

Benjamin F. Meyers retained his seat.

Authorities referred to: Constitution of Pennsylvania, article 3; Conflict of Laws (Judge Story), sec. 43; Lyma *vs.* Fiske (5 Peck, 234); Dr. Lieber's Encyclopedia Americana, title Domicile: Barnes *vs.* Adams (3 Con. Elec. Cases, 771); 5th Metcalf, Mass.; Putnam *vs.* Johnson (10 Mass., 488;) Monroe *vs.* Jackson (2 Elec. Cases, 98); Covode *vs.* Foster (41st Congress); Taylor *vs.* Reading (41st Congress); State *vs.* Olin (23 Wis., 319).

February 7, 1872.—Mr. Hoar, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the memorial of John Cessna, claiming to be admitted to the seat from the sixteenth Congressional district of Pennsylvania, respectfully report:*

The case has required the consideration of many very interesting questions of law, and an examination, by itself, of the evidence in regard to the right to vote of each of several hundred persons. The committee have given it patient and thorough study.

The majority for the sitting member according to the returns, when correctly added, is fourteen. The contestant has shown that more than fourteen illegal votes were cast for his antagonist, and would have established his claim to the seat, were it not for illegal votes which were cast for the contestant himself, the evidence of which, so far as appears, first came to his knowledge when introduced in the case. The questions of law which have arisen are, some of them, exceedingly doubtful, and there are statements of the law in the reports of previous cases which would be quite likely to induce an expectation on the part of the contestant of a different result in the whole matter. He seems, therefore, to have been well warranted in the belief that his duty to the people required him to claim the seat. The whole case has been conducted with entire propriety on both sides.

The majority for the sitting member, as found by the return judges, is fifteen. There is a mistake in the footing, and one should be deducted, leaving fourteen. The contestant claims that three hundred and twenty-eight illegal votes were cast for the sitting member; that two lawful votes which were cast for himself were not counted, and that eight legal votes which were offered for him were rejected. The sitting member, joining issues on these allegations, claims also that three hundred and forty-one votes were illegally thrown for contestant. Of these contestant admits that eighty-one have been proved to be illegal.

The provisions of the constitution of Pennsylvania, concerning the qualification of voters, are as follows:

Article III, section 1. In elections by the citizens every (white) freeman of the age of twenty-one years, *having resided* in this State one year, and in the election district where

he offers to vote ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had previously been a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the State six months: *Provided*, That (white) freemen citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year and in the election district ten days as aforesaid, shall be entitled to vote although they shall not have paid taxes.

The contestant claims, first, that he received a majority of the votes cast at the election by lawfully-qualified voters; and, second, that the votes of certain other persons, lawfully qualified, who desired to vote for him, were excluded, either from the box or the count, by the mistake or misconduct of the election officers. The result to which an examination of the first claim has brought us renders it needless to consider the second.

The questions which it is material to consider relate either to the qualification of voters under the clause in the constitution of Pennsylvania just cited, or to the rules of evidence which should govern the House in election cases.

Under these constitutional provisions, the burden of proof, when either party insists that a vote should be deducted from those cast and returned for his competitor, is upon that party to show that the person whose vote is in question voted; that the vote was for the competitor; that the voter lacked some one of the following qualifications, viz: citizenship of the United States; the age of twenty-one; residence in the election district for ten days just previous to the election; residence in the State one year just previous to the election, or for six months, if previously a qualified voter; payment, within two years, of a State or county tax, assessed at least ten days before the election, or, in lieu thereof, being between twenty-one and twenty-two years old.

It is claimed by the contestant that a considerable number of those who voted for his competitor lacked the qualification of residence in the election district. The largest number to whom this objection applies came into the election district for the purpose of working upon a railroad in process of construction therein, were employed in building said railroad, and were not proved to have formed any intention to reside in the district after its completion. The length of time which the completion of the road would be likely to occupy was not distinctly proved, but it was shown that persons who were in fact at work upon it continued in the district for a longer period than eighteen months. The committee have carefully considered the legal question which is thus raised.

The word "residence" used in the constitution of Pennsylvania in describing the qualification of voters is equivalent to "domicile," not in the sense in which a man may have a commercial domicile or residence in one country while his domicile of origin and of allegiance is in another, but in the broadest sense of the term. As it is upon the meaning of this word that the case chiefly turns, it will be well to consider it a little more fully.

The word "domicile," or "residence," as used in law, is incapable of exact definition. Inquiries into it are very apt to be confused by taking the tests which have been found satisfactory in some cases and attempting to apply them as inflexible rules in all. Probably the definition which is most expressive to the American mind is that a man's domicile is "where he has his home." Two or three rules, however, are well established. A man must have a domicile somewhere; a domicile once gained remains until a new one is acquired; no man can have two domi-

ciles at the same time. With these exceptions, it will, we believe, be found that nearly every rule laid down on the subject in the books, even if generally useful, fails to be of universal application, and would be opposed to the common sense of mankind if extended to some states of fact that may arise. For instance, Vattel defines domicile to be "*a fixed residence in any place with an intention of always staying there.*" On this Judge Story (Conflict of Laws, sec. 43) well remarks: "This is not an accurate statement. It would be more correct to say that that place is properly the domicile of a person in which his habitation is fixed, without any present intention of removing therefrom." But certainly Judge Story's definition is not much better. A man's domicile remains after he forms the intention of removing therefrom, and sometimes even after he removes, until he gets another. A man may acquire a domicile, if he be personally present in a place and elect that as his home, even if he never design to remain there always, but design at the end of some short time to remove and acquire another. A clergyman of the Methodist Church who is settled for two years may surely make his home for two years with his flock, although he means, at the end of that period, to remove and gain another. So of the principle upon which the contestant most relies in the present case.

He claims—and many expressions can be found used by commentators and in judicial decisions which seem to support the claim—that personal presence in a place with intent to remain there only for a limited time and for the accomplishment of a temporary purpose, and to depart when that purpose is accomplished, will not constitute a residence. This is true as a general rule. It is true of those persons, probably the greater number, who, while so present and engaged in business, have some other principal seat of their interests and affections elsewhere. Most men have some permanent home, the claims of which outweigh those of a place of temporary sojourn. The place where a man's property is, where his family is, the place to which he goes back from time to time whenever no temporary occasion calls him elsewhere, the domicile of his origin, where the permanent and ordinary business of his life is conducted—that is to the ordinary man the place of his home. But we are now dealing with a class of persons who have no property, who have no family, or whose family moves with them from place to place, who have no place to return to from temporary absences, the domicile of whose origin is in another country, and has been in the most solemn manner renounced, and the ordinary business of whose life consists in successive temporary employments in different places.

Suppose a man, single, with no property, to come from Ireland and be employed all his life on railroads or other like works in different places in succession. If he does not acquire a residence he can never become a citizen, because he never would reside in this country at all. It seems to us that to such persons the general rule above stated does not apply, but where a man who has no interests or relations in life which afford a presumption that his home is elsewhere, comes into an election district for the purpose of working on a railroad for a definite or an indefinite period, being without family, or having his family with him, expecting that the question whether he shall remain or go elsewhere is to depend upon the chances of his obtaining work, having abandoned, both in fact and in intention, all former residences, and intends to make that his home while his work lasts—that will constitute his residence, both for the purpose of such jurisdiction over him as residence confers, and for the purpose of exercising his privileges as a citizen. Of course the intent above supposed must be in good faith, and

an intent to make such district the home for all purposes. The party's intent to vote in the district where he is, he knowing all the time that his home is elsewhere, will not answer the law.

The rule is stated by Chief Justice Shaw, in Lyman *vs.* Fiske (5 Peck, 234), as follows: "It is difficult to give an exact definition of habitancy. In general terms, one may be designated as an inhabitant of that place which constitutes the principal seat of his residence, of his business pursuits, connections, attachments, and of his political and municipal relations. It is manifest, therefore, that it embraces the fact of residence at a place with the intent to regard it his home. The act and the intent must concur, and the intent may be inferred from declarations and conduct. It is often a question of great difficulty, depending upon minute and complicated circumstances, leaving the question in so much doubt that a slight circumstance may turn the balance. In such a case the mere declaration of the party, made in good faith, of his election to make the one place rather than the other his home, would be sufficient to turn the scale."

The article in the appendix to vol. 4 of Dr. Lieber's Encyclopædia Americana, title Domicile, written by Judge Story, is, perhaps, the best treatise on this subject to be found. He says: "In a strict and legal sense, that is properly the domicile of a person where he has fixed his true, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." It is often a mere question of intention. If a person has actually removed to another place, with an intention of remaining there for an indefinite time and as a place of present domicile, it becomes his place of domicile, notwithstanding he may have a floating intention to go back at some future period. *A fortiori* would this be true if his "floating intention" were to go elsewhere in future and not to go back, as in such case the abandonment of his former home would be complete.

In the Allentown election case (Brightly's Lead. Cases on Elections, 475) it is said: "Unmarried men, who have fully severed the parental relation, and who have entered the world to labor for themselves, usually acquire a residence in the district where they are employed, if the election officers be satisfied they are honestly there pursuing their employment, with no fixed residence elsewhere, and that they have not come into the district as 'colonizers,' that is, for the mere purpose of voting, and going elsewhere as soon as the election is held." "The unmarried man who seeks employment from point to point, as opportunity offers, and who has severed the parental relation, becomes a laborer, producing for himself, and thus adds to the productive wealth of the community in which he resides, being willing not only to enjoy political privileges, but also to assume and discharge political and civil duties." *A fortiori* would this reasoning apply to the married laborer who takes his family with him.

The habits of our people, compared with many other nations, are migratory. To persons, especially young men, in many most useful occupations, the choice of a residence is often experimental and temporary. The home is chosen with intent to retain it until the opportunity shall offer of a better. But if it be chosen as a home, and not as a mere place of temporary sojourn, to which some other place, which is more truly the principal seat of the affections or interests, has superior claim, we see not why the policy of the law should not attach to it all the privileges which belong to residence, as it is quite clear that it is the residence in the common and popular acceptation of the term.

The case of Barnes *vs.* Adams (3 Con. El. Cas., 771) does not, when

carefully examined, conflict with these rules. The passage cited from that case is not a statement of the grounds on which the House or even the committee determined the case, but is a concession to the party against whom it was decided. It therefore, if it bore the meaning contended for, would not be authority in future cases. But the language, taken together, it seems to us, means only that going into an election precinct for a temporary purpose, with the intent to leave it when that purpose is accomplished, no other intent and no other fact appearing, is not enough to gain a residence. In this view, it is not in conflict with the opinion here expressed.

It is true that, as was remarked in the outset, a former residence continues until a new one is gained. But in determining the question whether a new one has been gained, the fact that everything which constituted the old one—dwelling-house, personal presence, business relations, intent to remain—has been abandoned is a most significant fact.

5. We have, then, to apply these principles to the evidence in the case.

The contestant claims that three principal classes of persons who voted for the sitting member were disqualified by reason of non-residence, viz: persons who came into the district for the purpose of working on the railroad; students at the university, who came from other districts solely for the sake of pursuing their studies, and paupers supported in a poor-house common to all the districts in the county, who came to the poor-house from another district, and voted in the district where it is situated.

The cases of the railroad laborers and contractors should be disposed of by the following rules:

1st. Where no other fact appears than that a person, otherwise qualified, came into the election district for the purpose of working on the railroad for an indefinite period, or until it should be completed, and voted at the election, it may or may not be true that his residence was in the district. His vote having been accepted by the election officers, and the burden being on the other side to show that they erred, we are not warranted in deducting the vote.

2d. Where, in addition, it appears that such voter had no dwelling-house elsewhere, had his family with him, and himself considered the voting-place as his home until his work on the railroad should be over, we consider his residence in the district affirmatively established.

3d. On the other hand, where it appears that he elected to retain a home, or left a family or a dwelling-place elsewhere, or any other like circumstances appear negativing a residence in the voting precinct, the vote should be deducted from the candidate for whom it is proved to have been cast.

The principles applicable to the students are not dissimilar. The law, as it applies to this class of persons, is fully and admirably stated by the supreme court of Massachusetts, in an opinion given to the legislature, and reported in 5th Metcalf, and which is cited with approbation in nearly all the subsequent discussions of the subject. Under the rule there laid down, the fact that the citizen came into the place where he claims a residence for the sole purpose of pursuing his studies at a school or college there situate, and has no design of remaining there after his studies terminate, is not necessarily inconsistent with a legal residence, or want of legal residence, in such place. This is to be determined by all the circumstances of each case. Among such circumstances, the intent of the party, the existence or absence of other ties or interests elsewhere, the dwelling-place of the parents, or, in the case of

an orphan just of age, of such near friends as he had been accustomed to make his home with in his minority, would of course be of the highest importance. (See Putnam *vs.* Johnson, 10 Mass., 488.)

The case of the paupers presents greater difficulty. Under the laws of Pennsylvania it is conceded they may be entitled to vote. In several contested-election cases cited by the contestant, it is stated by the committee that, in the absence of statute regulations on the subject, a pauper abiding in a public almshouse, locally situated in a different district from that where he dwells when he becomes a pauper, and by which he is supported, away from his original home, does not thereby change his residence, but is held constructively to remain at his old home. (Monroe *vs.* Jackson, 2 Elect. Cas., 98; Covode *vs.* Foster, Forty-first Congress; Taylor *vs.* Reading, Forty-first Congress.)

And there are some strong reasons for this opinion. The pauper is under a species of confinement. He must submit to regulations imposed by others, and the place of his abode may be changed without his consent. Having few of the other elements which ordinarily make up a domicile, the element of choice also, in his case, almost wholly disappears. There are also serious reasons of expediency against permitting a class of persons who are necessarily so dependent upon the will of one public officer to vote in a town or district in whose concerns they have no interest. On the other hand, the pauper's right to vote is recognized by law. It can practically very seldom be exercised except in the near neighborhood of the almshouse. In the case of a person so poor and helpless as to expect to be a life-long inmate of the poorhouse, it is, in every sense in which the word can be used, really and truly his residence—his home. And it is important that these constitutional provisions as to suffrage should be carried out in their simplest and most natural sense, without the introduction of artificial or technical construction. It will, however, be unnecessary to determine this question, as will hereafter appear.

Another question of importance which has arisen in the discussion of the cause is the question whether evidence of the declarations of alleged voters, made not under oath, in the country, should be received to show the fact that they voted, or for whom, or that they were not legally entitled to vote.

Some of the committee think that such evidence ought in no case to be admitted, except, of course, so far as declarations made at the time of the party's, intent or understanding as to his then present residence, or his purpose in a removal, is admissible as part of the *res gestæ*. All of the committee are of opinion that such evidence is to be received with the greatest caution, to be resorted to only when no better is to be had, and only acted on when the declarations are clearly proved, and are themselves clear and satisfactory. As this question has been quite fully considered it may be proper briefly to discuss it here.

While the practice of the English House of Commons is not uniform, the general current of the precedents is in favor of admitting the declaration of voters as evidence.

The opinions of several American courts and of some text-writers of approved authority are the same way. The correctness of this practice has been earnestly questioned in this House, and there is one decision against it; but, on the whole, the practice here seems to be in favor of its admission. In England, where the vote for members of Parliament is *viva voce*, the fact that the alleged voter voted, and for whom, is susceptible commonly of easy proof by the record. In one case, however, where the poll-list had been lost, the parol declaration of a voter

how he voted seems to have been received without question. In State *vs.* Olin (23 Wis., 319), it is stated that the declaration of the voter is admissible to prove that he voted, and for whom, as well as to prove his disqualification. The general doctrine is usually put upon the ground that the voter is a party to the proceeding, and his declarations against the validity of his vote are to be admitted against him as such. If this were true, it would be quite clear that his declarations ought not to be received until he is first shown, *aliunde*, not only to have voted, but to have voted for the party against whom he is called. Otherwise it would be in the power of an illegal voter to neutralize wrongfully two of the votes cast for a political opponent: 1st, by voting for his own candidate; 2d, by asserting to some witness afterward that he voted the other way, and so having his vote deducted from the party against whom it was cast.

But it is not true that a voter is a party in any such sense as that his declarations are admissible on that ground. He is not a party to the record. His interest is not legal or personal. It is frequently of the slightest possible nature. If he were a party, then his admissions should be competent as to the whole case—as to the votes of others, the conduct of the election officers, &c., which it is well settled they are not. Another reason given is, that the inquiry is of a public nature, and that it should not be limited to the technical rules of evidence established for private causes. This is doubtless true. It is an inquiry of a public nature, and an inquiry of the highest interest and consequence to the public. Some rules of evidence applicable to such an inquiry must be established. It is nowhere, so far as we know, claimed that in any other particular the ordinary rules of evidence should be relaxed in the determination of election cases. The sitting member is a party deeply interested in the establishment of his right to an honorable office. The people of the district especially, and the people of the whole country, are interested in the question, who shall have a voice in framing the laws? The votes are received by election officers, who see the voter in person, who act publicly in the presence of the people, who may administer an oath to the person offering to vote, and who are themselves sworn to the performance of their duties. The judgment of these officers ought not to be reversed and the grave interests of the people imperiled by the admissions of persons not under oath, and admitting their own misconduct.

The practice of admitting this kind of evidence originated in England. So far as it has been adopted in this country it has been without much discussion of the reasons on which it was founded. In England, as has been said, the vote was *viva voce*. The fact that the party voted, and for whom, was susceptible of easy and undisputable proof by the record. The privilege of voting for members of Parliament was a franchise of considerable dignity, enjoyed by few. It commonly depended on the ownership of a freehold, the title to which did not, as with us, appear on public registries, but would be seriously endangered by admissions of the freeholder which disparaged it. An admission by the voter of his own want of qualification was therefore ordinarily an admission against his right to a special and rare franchise, and an admission which seriously imperiled his title to his real estate, an admission so strongly against the interest of the party making it would seldom be made unless it were true. It furnishes no analogy for a people who regard voting, not as a privilege of a few, but as the right of all, where the vote, instead of being *viva voce*, is studiously protected from publicity, and where such admissions, instead of having every probability in favor of their truth,

may so easily be made the means of accomplishing great injustice and fraud, without fear either of detection or punishment.

It may be said that the principle of the secret ballot protects the voter from disclosing how he voted, and in the absence of power to compel him to testify and furnish the best evidence, renders the resort to other evidence necessary.

The committee are not prepared to admit that the policy which shields the vote of the citizen from being made known without his consent is of more importance than an inquiry into the purity and result of the election itself. If it is, it cannot protect the illegal voter from disclosing how he voted. If it is, it would be quite doubtful whether the same policy should not prevent the use of the machinery of the law to discover and make public the fact, in whatever way it may be proved. It is the publicity of the vote, not the interrogation of the voter in regard to it, that the secret ballot is designed to prevent. There would seem to be no need to resort to hearsay evidence on this ground, unless the voter has first been called, and, being interrogated, asserts his privilege and refuses to answer. Even in that case, a still more conclusive objection to hearsay testimony of this character is this: it is not at all likely to be either true or trustworthy.

The rule that admits secondary evidence when the best cannot be had only admits evidence which can be relied on to prove the fact, as sworn copies when an original is lost, or the testimony of a witness to the contents of a lost instrument. Hearsay evidence is not admitted in such cases, and is only admitted in cases where hearsay evidence is, in the ordinary experience of mankind, found to be generally correct, as in matters of pedigree and the like. But a man who is so anxious to conceal how he voted as to refuse to disclose it on oath, even when the disclosure is demanded in the interest of public justice, and who is presumed to have voted fraudulently—for otherwise, in most cases, the inquiry is of no consequence—would be quite as likely to have made false statements on the subject, if he had made any. To permit such statements to be received, to overcome the judgment of the election officers, who admit the vote publicly, in the face of a challenge, and with the right to scrutinize the voter, would seem to be exceedingly dangerous.

The action of the House heretofore does not seem to have been so decided or uniform as to preclude it from now acting upon what may seem to it the reasonable rule, even if it should think it best to reject this class of evidence wholly. But as both parties have taken their evidence, apparently with the expectation that this class of evidence would be received, and as, in view of the numerous and respectable authorities, it is not unlikely the House may follow the English rule, we have applied that to the evidence, with the limitation, of the reasonableness of which it would seem there can be no question, that evidence of hearsay declarations of the voter can only be acted upon when the fact that he voted has been shown by evidence *aliunde*, and when the declarations have been clearly proved, and are themselves clear and satisfactory.

The result of the whole case, then, is as follows:

The majority for the sitting member, as returned, is fourteen.

The contestant admits that eighty-one illegal votes were cast for him. But as in six cases this admission seems to us to have been made on an erroneous view of the law, we have deducted from the contestant but seventy-five of this number, leaving the majority for him to overcome eighty-nine.

The sitting member has proved that at least fifteen of the votes cast for contestant, in addition to those admitted, were illegal, which would leave to the sitting member a majority of one hundred and four.

Assuming that all the persons who are alleged by contestant to have voted for the sitting member did so vote; assuming that all those persons who came into the election district to pursue their studies were not legal voters in the district; assuming that all the paupers who were committed to the almshouse from any other district than that where they voted were not entitled to vote therein; receiving evidence of declarations of persons in the country as to their disqualifications, and acting upon them where they are corroborated by other evidence or as clearly and satisfactorily proved, and in all these respects we take the view of the law most favorable to contestant; deducting also from the sitting member all votes cast by persons not naturalized or not of age, or who had not paid a tax or dwelt the required time in the State; but, on the other hand, not sustaining his claim that persons who came into the district for the purpose of working on the railroad cannot be held to have acquired a residence there unless they are also shown to have formed the intention of remaining there permanently after the work was done, we find that the contestant has failed to overcome the sitting member's majority of one hundred and one, above stated. In dealing with the evidence as to each of the numerous individuals—six hundred and seventy-nine in all—the committee formed different conclusions of fact in some instances; but taking the result in every case where the committee differed as to the facts most favorable to the contestant, it is as above set forth.

The committee therefore recommend the accompanying resolution:

*Resolved*, That Benjamin F. Meyers is entitled to retain the seat which he now holds from the sixteenth Congressional district of Pennsylvania.

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## NORRIS vs. HANDLEY.—THIRD CONGRESSIONAL DISTRICT OF ALABAMA.

Allegations of intimidation by threats, fraud, violence, and unlawful practices; charges of gross deception and fraud in preventing voters from casting their ballots as intended.

Unlawful acts of the State and county canvassers in the conduct of the election.

Contestant failed to fully sustain charges.

The House adopted the report, April 4, 1872.

W. A. Handley retained his seat.

Authorities referred to: Acts of Alabama, 1868. (Sec. 37, page 277.)

March 14, 1872.—Mr. McCrary, from the Committee of Elections, made the following report:

The certified votes were as follows:

| | |
|---|---|
| W. A. Handley | 12,710 |
| B. W. Norris | 9,568 |
| Majority for W. A. Handley | 3,142 |

In order to overcome this apparently large majority and establish his claim to the seat, the contestant makes the following allegations:

1. The proofs show that in certain precincts such intimidation prevailed among the supporters of the contestant, caused by the threats, fraud, violence, and unlawful practices of the supporters of the sitting member, that the election, as an expression of the will of the legal voters therein, was utterly fraudulent and void, and the returns ought to be rejected. The precincts referred to are:

1.—*Auburn, Lee County.*

| | |
|---|---|
| W. A. Handley | 203 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 203 |

2.—*Salem, Lee County.*

| | |
|---|---|
| W. A. Handley | 226 |
| B. W. Norris | 4 |
| Majority for W. A. Handley | 222 |

3.—*Loachapoka, Lee County.*

| | |
|---|---|
| W. A. Handley | 341 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 341 |

4.—*Ridge Grove, Lee County.*

| | |
|---|---|
| W. A. Handley | 21 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 21 |

5.—*Fredonia, Chambers County.*

| | |
|---|---|
| W. A. Handley | 249 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 249 |

6.—*Oak Bowery, Chambers County.*

| | |
|---|---|
| W. A. Handley | 53 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 53 |

7.—*Cusseta, Chambers County.*

| | |
|---|---|
| W. A. Handley | 94 |
| B. W. Norris | 25 |
| Majority for W. A. Handley | 69 |

8.—*Hackneyville, Tallapoosa County.*

| | |
|---|---|
| W. A. Handley | 234 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 234 |

9.—*Youngville, Tallapoosa County.*

| | |
|---|---|
| W. A. Handley | 220 |
| B. W. Norris | 4 |
| Majority for W. A. Handley | 216 |

10.—*Daviston, Tallapoosa County.*

| | |
|---|---|
| W. A. Handley | 216 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 216 |

11.—*Gold Branch, Tallapoosa County.*

| | |
|---|---|
| W. A. Handley | 137 |
| B. W. Norris | 37 |
| Majority for W. A. Handley | 100 |

12.—*Dudleyville, Tallapoosa County.*

| | |
|---|---|
| W. A. Handley | 214 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 214 |

13.—*Central Institute, Elmore County.*

| | |
|---|---|
| W. A. Handley | 162 |
| B. W. Norris | 23 |
| Majority for W. A. Handley | 139 |

14.—*Texas, Macon County.*

| | |
|---|---|
| W. A. Handley | 66 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 66 |

15.—*Notasulga, Macon County.*

| | |
|---|---|
| W. A. Handley | 235 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 235 |

16.—*Society Hill, Macon County.*

| | |
|---|---|
| W. A. Handley | 80 |
| B. W. Norris | 41 |
| Majority for W. A. Handley | 39 |

16.—*Himes', or Trawick's, Russell County.*

| | |
|---|---|
| W. A. Handley | 76 |
| B. W. Norris | 2 |
| Majority for W. A. Handley | 74 |

17.—*Uchee, Russell County.*

| | |
|---|---|
| W. A. Handley | 153 |
| B. W. Norris | none. |
| Majority for W. A. Handley | 153 |

18.—*Eastaboga, Talladega County.*

| | |
|---|---|
| W. A. Handley | 220 |
| B. W. Norris | 25 |
| Majority for W. A. Handley | 195 |

19.—*Blue-Eye, Talladega County.*

| | |
|---|---|
| W. A. Handley | 107 |
| B. W. Norris | 16 |
| Majority for W. A. Handley | 91 |

20.—*Fayetteville, Talladega County.*

| | |
|---|---|
| W. A. Handley | 136 |
| B. W. Norris | 117 |
| Majority for W. A. Handley | 19 |

21.—*Nixburgh, Coosa County.*

| | |
|---|---|
| W. A. Handley | 215 |
| B. W. Norris | 189 |
| Majority for W. A. Handley | 26 |

*22.—Socapatoy, Coosa County.*

| | |
|---|---|
| W. A. Handley | 111 |
| B. W. Norris | 101 |
| Majority for W. A. Handley | 10 |

2. That the evidence shows that the following votes were unlawfully rejected by county canvassers, viz:

*1.—Girard Precinct, Russell County.*

| | | |
|---|---|---|
| Box No. 1—B. W. Norris | 715 | |
| W. A. Handley | 204 | |
| Majority for B. W. Norris | | 511 |
| Box No. 2.—B. W. Norris | 195 | |
| W. A. Handley | 3 | |
| Majority for B. W. Norris | | 192 |
| Total majority for B. W. Norris | | 703 |

*2.—Macon County.*

| | Norris. | Handley. | Maj. for Norris. |
|---|---|---|---|
| Tuskegee | 167 | 4 | 163 |
| Warrior Stand | 29 | 12 | 17 |
| Cotton Valley | 29 | 14 | 15 |
| Honeycut | 35 | 2 | 33 |
| Cross Keys | 54 | 4 | 50 |
| Cloughs | 12 | 4 | 8 |
| Total majority for B. W. Norris | | | 286 |

*3.—Wetumpka, Elmore County.*

| | |
|---|---|
| B. W. Norris | 75 |
| W. A. Handley | 10 |
| Majority for B. W. Norris | 65 |

3. That the evidence shows that the following vote of Russell County, rejected by the State canvassers on account of defects in the returns, are to be counted by the House, viz:

| | |
|---|---|
| B. W. Norris | 1,426 |
| W. A. Handley | 1,157 |
| Majority for B. W. Norris | 269 |

4. That the evidence shows that thirty of the votes received by the sitting member at Bluffton, Chambers County, were illegal.

5. That the illegalities practiced at the precinct of Silver Run, in Talladega County, were such that the returns of that precinct furnish no evidence of the will of the electors, and are to be rejected. The vote was as follows:

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|---|---|
| W. A. Handley | 124 |
| B. W. Norris | 42 |
| Majority for W. A. Handley | 82 |

6. That the election in the following counties was rendered invalid by systematic and general intimidation of the supporters of the contestant, effected by the deliberate efforts of the supporters of the sitting member, viz:

*1.—Coosa County.*

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| W. A. Handley | 1,102 |
| B. W. Norris | 606 |
| Majority for W. A. Handley | 496 |

*2.—Tallapoosa County.*

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|---|---|
| W. A. Handley | 2,283 |
| B. W. Norris | 415 |
| Majority for W. A. Handley | 1,868 |

7. That by violence and intimidation the supporters of the sitting member unlawfully deprived the contestant of the following votes, viz:

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|---|---|
| 1. Opelika, Lee County | 20 |
| 2. Chambers County | 300 |
| 3. Hurtville, Russell County | 200 |
| 4. Childersburg, Talladega County | 50 |
| 5. Macon County, exclusive of Texas, Notasulga, and Society Hill | 150 |
| 6. Dadeville, Tallapoosa County | 100 |

8. That by gross deception and fraud practiced at Silver Run, Russell County, by supporters of the sitting member, three hundred and twenty-five electors who intended to, and at the time supposed they did, vote for the contestant were made to vote for the sitting member.

These embrace all the allegations relied upon by contestant, as stated by his counsel. They are severally denied by the sitting member, who also makes charges of fraud and intimidation against contestant and his supporters. Upon the issues thus joined a large volume of testimony has been taken, and the same has been examined and considered with much care and labor by the committee. The case must turn upon the question of intimidation, or rather upon the question whether the result was secured by means of violence, intimidation, threats, or other unlawful means resorted to by the sitting member, or his supporters, to deter legal voters from casting their votes, as they desired to do, for contestant. It will be more convenient for us to reserve what we have to say upon this question of intimidation until after we have stated our conclusions from the evidence upon the other questions in the case.

GIRARD PRECINCT, RUSSELL COUNTY.

At this precinct two ballot-boxes were opened, which are designated as box No. 1 and box No. 2. The former was rejected by the county canvassers for alleged fraudulent voting, and the latter upon the ground that it was not opened by proper authority.

The statute of Alabama, defining the powers and duties of the board of county canvassers, or supervisors of elections, provides as follows:

That it shall be the duty of the board of supervisors of elections, upon good and sufficient evidence that fraud has been perpetrated, or unlawful or wrongful means resorted to to prevent electors from freely and fearlessly casting their ballots, to reject such illegal or fraudulent votes cast at any such polling-place, which re'ection so made as aforesaid shall be final unless appeal is taken within ten days to the probate court.—(Acts of 1868, page 277, sec. 37.)

Another section provides that this "board of supervisors of elections" shall be composed of the judge of probate, sheriff, and clerk of the circuit court in each county.

In the opinion of the committee it is not competent for the legislature of a State to declare what shall or shall not be considered by the House of Representatives as evidence to show the actual votes cast in any district for a member of Congress, much less to declare that the decision of a board of county canvassers, rejecting a given vote, shall estop the House from further inquiry. The fact, therefore, that no appeal was taken from the decision of the board of canvassers, rejecting the vote of Girard precinct, cannot preclude the House from going behind the returns and considering the effect of the evidence presented. From this evidence we conclude that box No. 1 was improperly rejected by the board. The evidence offered for the purpose of showing fraudulent voting at this box is insufficient. As to box No. 2, the committee are satisfied that it was properly rejected. It was opened only during a part of the day, and it is at least doubtful whether it was legally opened. It

was closed by order of the sheriff about 12 o'clock in the day, and we have no doubt that many of the voters who had deposited their ballots in it were advised to, and did, subsequently vote at box No. 1.

RUSSELL COUNTY.

The entire vote of this county was thrown out by the State canvassers on the ground that the return was signed by but one of the three county officers required by law to sign it. This action on the part of the State board of canvassers was in pursuance of the statute, which declares that the returns from each county must be certified by a majority of the county canvassers. It is, however, the duty of the House, in considering the merits of the case, to go behind the returns, and consider such competent evidence as may be produced to show the number of legal votes actually cast for each candidate. An examination of the evidence satisfies the committee that the vote of Russell County, with the exception of that cast at box No. 2, Girard precinct, should be counted.

MACON COUNTY.

The judge of probate, sheriff, and circuit clerk of this county, composing the board of county canvassers, in revising the returns from the various precincts, rejected 326 votes which were cast for Norris, and 40 votes which were cast for Handley. We have already seen that the statute of Alabama confers upon this board authority to revise the return of the vote of the several precincts, and, upon sufficient proof, to throw out such as in their judgment are illegal or fraudulent. Although this is an extraordinary, not to say a dangerous, power when placed in the hands of a board of this character, with such inadequate facilities for obtaining legal evidence and deciding upon questions of fraud, yet it is believed by the committee that the action of such a board under the statute in question, and in pursuance of the power conferred thereby, is to be regarded as *prima facie* correct, and to be allowed to stand as valid until shown by evidence to be illegal or unjust. The testimony of but one witness has been taken in relation to the rejection of these votes in Macon County, and that is the testimony of J. T. Menafee, judge of probate, and *ex officio* one of the board of canvassers. He testifies that the board spent several days in the work of revising the vote of the county.

They had no evidence before them, however, except the registration-list and the poll-list. The former is shown to have been exceedingly imperfect and unreliable, and cannot be considered such "good and sufficient evidence" as the statute requires to justify the board in rejecting the votes in question.

The presumption is strongly in favor of the legality of a vote which has been received by the officers provided by law for that purpose; and the question is whether this presumption can be overcome by evidence so unsatisfactory as that upon which the board acted. The board were empowered by the statute we have quoted to obtain evidence of the alleged illegality and fraud practiced at the precincts named, and they were not limited to an examination of the registration-list and the poll-list. Since no evidence was taken, it is our opinion that the decision of the officers of election at the various precincts, admitting the votes in question, is entitled to greater weight than the action of the board of canvassers in throwing them out. The former had the voters before them, and the power to examine them as to their qualifications, while

the latter, in our judgment, had no reliable evidence before them upon which to act. These remarks apply also to the Wetumpka precinct, in Elmore County.

BLUFFTON PRECINCT, CHAMBERS COUNTY.

This precinct borders on the Georgia line, and the voting-place was within a few hundred yards of that line. It seems probable that a number of votes were cast by persons from Georgia. It is not shown how many nor for whom they were cast. One witness puts the number at 30, but says he knew, of his own knowledge, only a few to have been non-residents; as to the others, he depended upon hearsay. As, however, it cannot be material to ascertain the precise number of illegal votes (since it is not claimed that there were more than 30), we will not pursue the inquiry.

SILVER RUN, TALLADEGA COUNTY.

There is no proof upon which we can properly reject any part of the vote of this precinct. The witness, whose testimony is referred to by counsel for contestant (G. P. Plowman, page 164 of record), only shows a decrease of the Republican vote since the previous election. This may have resulted from various causes, and cannot be taken as, of itself, establishing the charge that "illegalities were practiced," &c.

HURTVILLE, RUSSELL COUNTY.

Two witnesses testify that some two hundred colored men came to this poll to vote the Republican ticket, and that one Pollard, who was, or who claimed to be, acting as registrar, told them that they could not be registered, and that they could not vote without registration. The excuse given for not allowing them to register was that the paper furnished for that purpose was exhausted. Although these facts are denied by Pollard, who is called by the sitting member as a witness, it is doubtless true that a number of voters who desired to vote for contestant, and the Republican party, were, by some such means as those described by contestant's witnesses, prevented from doing so. The number of these persons cannot, however, be definitely stated from anything which appears in the evidence. The witnesses estimated them, from the appearance of the crowd and the number of tickets issued to them, at about two hundred. This is altogether too indefinite.

SILVER RUN, RUSSELL COUNTY.

We are asked to strike from the vote of the sitting member at this precinct 325 votes, and to add the same number to the vote of contestant, upon the ground that 325 freedmen who believed they voted for contestant were deceived by fraudulent tickets. The proof shows that a considerable majority of the voters at this precinct were colored men, and believed to be Republicans. Instead of producing the returns, or a certified copy thereof, to show how many votes were cast, and for whom, the contestant calls several witnesses, who testify to what they have heard or read in the newspapers as to the vote. By this kind of evidence it is shown that about 900 votes were polled, and that the Democratic majority was "upward of 140." Several witnesses give it as their opinion that 700 blacks and 200 whites voted at this precinct. One wit-

ness swears that he saw Democratic tickets headed "Republican ticket," and believes the freedmen were deceived by them. When, however, an attempt is made to say, from the evidence before us, with anything like accuracy, how many voters, if any, were in this manner deceived, it will be found impossible. If the facts be as contestant claims, it was within his power to prove them by evidence, at least, reasonably satisfactory. He should have proven the number of votes cast, and for whom cast, by the returns, or a certified copy thereof. He should have shown the names of the persons who voted by the poll-list, and he should have called the voters themselves, or some of them, to prove how many and who intended to vote for him and were defrauded by being furnished a ticket resembling the Republican ticket, but containing the name of the sitting member as a candidate for Congress. As the evidence is presented to us, it would not justify any action unless it might possibly be the rejection of the vote of the precinct, which would vary the general result by only 140 votes. If there was a fraud perpetrated, and we are inclined to the opinion, from the scanty evidence before us, that there was, it is utterly impossible to determine how many votes contestant lost and his competitor gained thereby.

We have now considered all that there is in the record of this case, aside from the alleged violence and intimidation. It is apparent that, leaving out of view the question of intimidation, the majority of the sitting member could not, in any view of the case, fall much below 2,000 votes, and that if we apply the ordinary rules of evidence, it would probably exceed that number.

### VIOLENCE AND INTIMIDATION.

This brings us, therefore, to the consideration of the material question in the case, viz: Does the evidence show that the majority of the sitting member was obtained by violence and intimidation?

Upon this subject it is to be observed, in the first place, that the evidence is exceedingly vague and unsatisfactory. It would seem that if over two thousand electors were deterred from voting by violence, threats, or intimidation, some of these electors could be found to come forward and swear to the fact. Your committee think that it would establish a most dangerous precedent to allow a fact of this character, so easily established by the direct and positive testimony of so many witnesses, to be proven solely by hearsay and general reputation. We have not forgotten nor overlooked the fact that the same state of things which would make men afraid to vote for a particular party might also make it difficult to secure testimony in behalf of that party. But in many parts of the district where testimony was taken there is no pretense that witnesses were intimidated; and, besides, if the contestant had shown to the satisfaction of the House that witnesses needed the protection of the Federal Government in order to be safe in testifying fully and freely, that protection would have been afforded at any cost. In the volume of testimony taken to prove the fact of general and wide-spread intimidation, not one witness is found who testifies that he himself was prevented from voting by reason of intimidation. They all testify to what they have heard others say, to the common rumor, and general reputation. There can be no doubt that testimony of this character ought to be held insufficient of itself to establish the fact of intimidation. It ought at least to be corroborated by other facts, such as the unexplained failure of large numbers of those alleged to have been intimidated, to vote, before the House could safely act

upon it. Nevertheless, the committee have considered carefully all the evidence in the case, without applying thereto the strict rules which would obtain in a court of justice, and we are clearly of opinion that it fails to sustain the contestant's allegations.

In considering this question of intimidation, the first inquiry naturally is, how many voters failed to vote? Although there may have been efforts to intimidate, and although outrages may have been committed with this view, yet if these efforts were unavailing, if, in spite of outrages, the freedmen who were sought to be intimidated did in fact vote, this is an end of controversy.

It is a well-known fact that even in the most exciting contests at the polls, there is always a considerable percentage of the vote not cast. If there was a full vote cast in the third district of Alabama, or as full as the average, this fact effectually disproves the allegation that 2,000 or more voters were deterred from voting. The counties in which intimidation is alleged to have deterred large numbers from voting are the following: Talladega, Coosa, Elmore, Tallapoosa, Chambers, Lee, Macon, and Russell. The Federal census of 1870, taken a short time prior to this election, shows the number of male persons in these counties over twenty-one years of age, and the evidence in this case shows the number who actually voted. The difference between the two will give us the number of males over twenty-one years of age who did not vote. We have no means of ascertaining how many of the male persons over twenty-one years of age were unnaturalized foreigners or persons otherwise disqualified from voting; but, making no allowance for these, we find the facts to be as set forth in the following table:

| Counties in dispute. | No. males over 21. | No. votes cast. | Difference. |
|---|---|---|---|
| Lee | 4,321 | 3,630 | 691 |
| Chambers | 3,294 | 2,868 | 426 |
| Tallapoosa | 3,029 | 2,698 | 331 |
| Elmore | 3,018 | 2,781 | 237 |
| Macon | 3,683 | 3,307 | 376 |
| Russell | 4,572 | 3,771 | 801 |
| Talladega | 3,425 | 3,371 | 54 |
| Coosa | 2,099 | 1,726 | 373 |
| | 27,441 | 24,152 | 3,299 |

In this calculation there are, of course, included the votes thrown out by the canvassers in the counties of Russell, Macon, and Elmore. In considering the question of intimidation, it is proper to consider these votes as cast, because, though they were rejected, the voters who cast them were not intimidated.

It will be observed that fully 88 per cent. of the vote of the counties in question (estimating as legal voters all male persons over twenty-one years of age) was actually cast. A glance at the statistics of popular elections in this country will show that this was an unusually full vote. For instance, in the first district of Alabama, at the same election, about 83 per cent. of the vote was cast; in the second district of the same State about 87 per cent.; in the fifth district, same State, about 72 per cent.; in the fifth district of Indiana, about 74 per cent.; in the sixteenth district of Pennsylvania, about 82 per cent.; in the third district of Ohio, about 81 per cent.; in the first district of Iowa, about 64 per cent.; thirteenth district of Ohio, about 89 per cent.; second district of Wisconsin,

about 78 per cent.; first district of Illinois, about 55 per cent.; tenth district of Illincis, about 59 per cent.

These examples, taken at random, will serve to show that it is not to be expected, even in hotly contested districts, as several of these notoriously were, with every possible effort put forth to induce voters to attend the election and vote, that more than from 80 to 90 per cent. of the vote will be polled. The latter percentage is seldom reached. In this case, if we were disposed to be very liberal toward the contestant, we could do no less than deduct from the total number of male persons over twenty-one years of age 10 per cent. for persons not qualified to vote, persons prevented from voting by circumstances for which no blame attaches to any one, and persons careless and indifferent about voting, or absolutely averse to so doing. Deducting 10 per cent. for these causes from the number of males of the requisite age to vote in the counties in question, and we find that there remains of persons who did not vote, and who might have been entitled to vote, in the whole eight counties only 581 persons. If the number of persons entitled to vote, and who abstained from so doing for reasons other than intimidation, amounted to no more than 10 per cent. of the voting population, then it is possible that 581 persons may have been kept from voting by intimidation, but if that were so it would not affect the result. It is true, however, that in nine cases out of ten the number of the voting population who do not vote exceeds 10 per cent. of the whole, and in a majority of cases in an ordinary Congressional election, in the absence of a Presidential contest, it will reach 20 per cent. A comparison, therefore, of the actual vote with the number of the voting population brings us irresistibly to the conclusion that intimidation was not so extensive and potential as alleged by contestant. If the proof of intimidation was much stronger and more conclusive than it is, it could not stand in the face of these statistics.

But there is another view of the case which seems to us conclusive against contestant. He asks us to throw out the vote of certain precincts at which he received no votes, or but very few. Now the proof shows that many of the voters in these precincts who were friends of contestant went to other precincts and voted. It was understood in all the counties that the freedmen should gather at certain designated precincts to vote, where they would have the encouragement and support of their friends, and probably be safer in the exercise of their right. No doubt in some cases these voters felt that it was unsafe in the precincts of their residence to vote. But they went elsewhere and did vote. The democrats staid at home and voted. The result was that in some of the country precincts where many colored people resided the vote was almost or quite unanimous for Mr. Handley, while at the voting places where the colored people were advised to and did gather, Mr. Norris received a very heavy vote. It would be manifestly unfair to throw out the precincts where one party mainly voted and count those where the other party mainly voted. The result of this course would be in most cases to throw out the Democratic vote which was cast in the precinct, and to count the Republican vote of the same precinct, which was cast in another part of the country. It may be true that in some precincts only a portion of the freedmen went away to vote, and that another portion did not vote at all, but the evidence wholly fails, in a single case, to show how many there were of each of these classes. It is well settled that the vote of an entire precinct shall not be thrown out unless it be impossible to make proof as to the number of legal votes cast in such precinct. In most of these precincts fraudulent voting is not

charged; the votes which were cast were legal, and should be counted. It is only charged that some did not have the opportunity to vote, by reason of intimidation. In such cases the number intimidated must be shown, or at least approximated, or some sufficient reason given for not making such proof. This being shown, it would be our duty either to count the persons intimidated as if they had voted according to their wishes, or throw out the entire precinct. It is not necessary to determine here which of these would be the proper course. The contestant shows that in precincts where there were many freedmen and Republicans there were few or no votes for him. It might follow from this fact that his friends did not vote, were it not for the proof, which is clear, that many of them, and probably most of them, voted at other places, and the further fact that the aggregate vote of the county in every case was more than ordinarily full. We cannot, then, throw out the vote of the precincts complained of.

It must not be supposed that the committee have overlooked or failed to consider the fact that gross wrongs and outrages are shown by the evidence to have been inflicted upon some of the freedmen in the district in question. Threats were undoubtedly made against this class of voters of personal injury or dismissal from employment in case they voted the Republican ticket, and these threats were carried out after the election, in several instances at least, in the brutal whipping of a number of freedmen in the night-time, by disguised men, and by the dismissal of others from employment. Several churches, occupied by freedmen for worship, were, prior to the election, burned down. Several cases of apparently unprovoked murder are in proof, and several cases of shooting and wounding. A white woman, who had been a teacher among the freedmen, was compelled to flee in the night-time from her home, and a freedman who was a preacher among his people was at the same time brutally murdered. Other cases similar in character are in proof, and it does not appear that the perpetrators of a single one of these outrages have ever been tried or punished, or that any vigorous or determined effort has been made to apprehend or punish any of the criminals. These crimes were well calculated to alarm and intimidate the colored people, and it must be said to their great credit that, in spite of all the dangers and difficulties, the great body of them did in fact exercise their right to vote, many of them traveling ten, fifteen, and even twenty miles from their homes for that purpose. These outrages, therefore, do not invalidate the election, because they did not intimidate the freedmen. We call attention to them now, to denounce them as most infamous, and to show that they have not escaped our attention. We are glad to be able to state that there is no proof connecting the sitting member in any way with any of these outrages. The committee recommend the adoption of the following resolution:

*Resolved*, That W. A. Handley is entitled to retain his seat in this House as Representative from the third district of Alabama.

## GOODING vs. WILSON.—FOURTH CONGRESSIONAL DISTRICT OF INDIANA.

Contestant alleges a miscount of the ballots to his prejudice, and the ineligibility of election officers who were not freeholders.

It was held that after a vote has been admitted, satisfactory and convincing proof is required to prove it illegal.

The majority of the committee reported in favor of the sitting member, Hon. Jeremiah M. Wilson.

Vote on the minority report—yeas 64, nays 105, not voting 71.

The House adopted the majority report April 22, 1872.

Authorities referred to: Chrisman *vs.* Anderson, 1 Bartlett, 329, 331, 334; Sleeper *vs.* Rice, 2 Bartlett, 473; Barnes *vs.* Adams, 2 Bartlett, 760; Eggleston *vs.* Strader, 2 Bartlett, 897; Blair *vs.* Barrett, 2 Bartlett, 315; statutes of Indiana; constitution of Indiana, sec. 4, art. 2.

April 9, 1872.—Mr. Aaron F. Perry, from the Committee on Elections, made the following report:

That numerous grounds of contest mentioned in the notices and brief of contestant have been substantially abandoned by him, and the remaining grounds to which he asks attention are by him summed up in two general inquiries, viz:

1st. Who actually received the majority of the votes of the district, as the same were cast by the persons voting for Representative in Congress?

2d. Who received the majority of the legal votes cast for Representative in Congress?

The official count, returns, and certificate give the contestee 12,561, and the contestant 12,557, making for the contestee a majority of 4 votes. This result must be accepted as the true result until the contrary is proved.

Contestant claims that in the official count a mistake was made in favor of the contestee at each of four different precincts or polls, viz: At Green Township, Wayne County, a mistake of 5 votes; at the south poll of Wayne Township, Wayne County, a mistake of 11 votes; at Noble Township, Rush County, a mistake of 2 votes; at Center Township, Hancock County, a mistake of 2 votes.

The proof of these mistakes, all except one, consists in evidence of subsequent informal and unofficial counts, made at a considerable time after the election; and as to the one exception, the proof, if such it can be called, is even less satisfactory.

On examination of precedents, it does not appear that this House favors the setting aside of official and formal counts, made with all the safeguards required by law, on evidence only of subsequent informal and unofficial counts, without such safeguards. No instance was cited at the hearing where the person entitled by the official count was deprived of his seat by a subsequent unofficial count. On principle it would seem that if such a thing were, in the absence of fraud in the official count, in any case admissible, it should be permitted only when the ballot-boxes had been so kept as to be conclusive of the identity of the ballots, and when the subsequent count was made with safeguards equivalent to those provided by law. In the absence of either of these conditions, the proof, as mere matter of fact and without reference to statutory rules, would be less reliable and therefore insufficient.

In the present case both of these conditions are wanting. The ballot-boxes were not kept in a way to be conclusive of the identity of the ballots, nor were the subsequent counts conducted in a way to entitle them to credit as against the official count.

The statute of Indiana requires at each poll, in addition to other officers, an officer called an inspector, who is required to preserve the ballots, one poll-book, and a tally-paper six months after the election, except when such election is contested; then they shall be preserved, subject to the order of any court trying such contest, until the same is determined.

The ballot-box at Green Township, Wayne County, was left by the inspector over night at the hotel where the election was held; and, some twelve hours afterward, received back at the hands of a young woman, a sister of the election clerk, who found it in a corner of the bar-room.

At the south poll of Wayne Township, Wayne County, the ballot-box was not kept by the inspector, but left with one of the trustees of the north precinct of the same township.

It does not appear who took charge of the ballot-box of Noble Township, Rush County, but the only person referred to in the testimony is spoken of as a trustee and not as inspector.

As to the ballot-box at Center Township, Hancock County, the evidence shows it to have been in the possession of a trustee, who was not inspector.

The manner of keeping the boxes was not such as to afford any guarantee whatever that they were not tampered with. The box at Green Township had a defective lock and came open by a jolt. It was kept so as to be accessible to many persons, and was unguarded. It was twice found open—showing it had been purposely opened, or had been carelessly handled and left open. The box at the south poll of Wayne Township was kept in the office of a trustee who officiated at the north poll of the same township. It was handed to him about 4 o'clock p. m. on the day after the election, and placed on top of the ballot-box for the north poll. How it had been kept before it was handed to him, is not shown. The office where these were kept was a business office, and the key was sometimes used by different persons. The keys to these boxes were kept in the drawer of an office-desk which was not locked. The tally-sheets, which had been placed in both boxes, when looked for after this contest had been moved, were missing from the boxes; showing that they had been opened.

The counting was done, as to all the boxes where a mistake is claimed, either on or nearly the same day, about three weeks after the election. This recount as to Green County was made by Mr. Pitts, the inspector, by himself. He has forgotten what was shown by the count, but he told three other men, who testify to what he said, and he supposes they testify correctly. What he told them is in accordance with the claim of the contestant. But he now testifies that he believes the official count was correct.

At the south poll of Wayne Township the first recount was made by Young, one of the election judges, and Scott, who had no official connection with the election, in the presence of Parry, who had no official connection with the election, with six or seven other persons about the office on business not connected with the election. This was on Saturday, and on the Monday following another count was made by the same Mr. Scott, by Finney, the inspector, and Jones, while Stubbs and Young tallied. It did not agree with the count made on the preceding Saturday, and differed nine votes from an informal count made on the

day of the election before the official count, which also differed from the official count. The official count appears to have been a careful one. The three unofficial counts differed each from the other, and all differed from the official one. Neither of the unofficial counts was made under circumstances to command confidence as against the official count.

The supposed miscount in Noble Township, Rush County, depends upon slender proof, if proof it can be called. One of the judges of the election, whose testimony has not been offered, some time after the election, called the attention of one of the clerks to an alleged mistake in a tally-sheet, where three votes, marked on the tally-sheet, had been counted as five in favor of the contestee. The clerk, the only witness called, examined the tally-sheet, found such a mistake; says the same mistake was made in both tally-sheets, and was carried into the certified statement of the board of canvassers. The certified statement purports to be set forth in the evidence, Exhibit M, certified by the clerk of the county. The law requires two tally-papers, one to be kept by the inspector, one to be filed by the clerk of the court. The witness says the same mistake occurred in both, but how he knew he does not state. The copy he had before him was transcribed from the tally-sheet in the clerk's office, and was put in evidence by the contestant as Exhibit I. Its correctness as a copy of the tally-sheet in the clerk's office was certified by the clerk on the 4th day of February. The deposition of the witness was taken on February 6. Another copy of the same tally-sheet, certified as correct by the same clerk on February 6, shows such a mistake. But those are both copies of the same tally-sheet. It becomes important to know how it was with the other tally-sheet. The witness says they were alike, but whether this was inference or knowledge he does not state. He did not examine the votes, nor are they produced. Neither the other clerk nor any other officer or person is called. The certified statement of the canvassing officers is set forth, and gives the vote as claimed by the contestee. It is clear that if there was a mistake, it could have been and should have been better proved.

The only supposed miscount remaining to be considered was at Center Township, Hancock County. Pratt was the inspector and proper custodian of the ballot-box. Efforts were made by Dickinson, an active friend of contestant, and by several others, to get him to convene the election board for another count. He declined, partly because the contestee was not present. To satisfy himself, however, he called in John L. Marsh, who tallied for him, and he carefully went over the tickets and found the official count to be correct. After this he delivered the box into the hands of Dickinson, who took charge of it. Dickinson called in Howard, a brother-in-law of contestant, and Swope, to tally, while he, Dickinson, went over the votes and announced them. Dickinson was the only one who saw the votes. This count made two more votes for Gooding. The only weight that can be claimed for this is, that it is equal to the informal count before made by Pratt and Marsh. Leaving one to neutralize the other, the official count remains unshaken. The method of keeping the box after Dickinson got it did not exclude the possibility of tampering with it. The result of the examination thus far is, that the contestee received a majority of the votes cast.

The remaining question is whether or not the majority of votes cast for contestee is shown to be erroneous by reason of illegal votes.

| | |
|---|---|
| The official majority for contestee is, votes | 4 |
| Contestant admits he himself received, illegal votes | 4 |
| Contestant also admits 7 other votes cast for him to be doubtful. On examination 3 of the 7 are found clearly illegal. Illegal votes | 3 |
| One other vote cast for contestant was illegal. Illegal vote | 1 |
| Contestee's majority thus shown, votes | 12 |

But contestant alleges that contestee received 35 illegal votes. No evidence whatever is offered as to 4 of these. On examination of the evidence as to the other thirty-one, four only were found to be illegal, leaving to contestee a clear legal majority of 8 votes.

The evidence has been examined as to every vote claimed to be illegal on both sides. They do not admit of classification, but involve a separate question for each voter. It is, therefore, undesirable and inconvenient to extend this report over so many details. Most of the questions were questions of residence or non-residence. Evidence which might have been sufficient to put the voter to his explanation, if challenged at the polls, is not deemed sufficient to prove a vote illegal after it has been admitted. Nor has the mere statement by a witness that a voter was or was not a resident, without giving facts to justify his opinion, been considered sufficient to throw out such a vote. The testimony shows a number of instances where a witness would state positively the residence or non-residence of a voter on some theory of his own, or some mistake of fact, when other testimony would show with entire clearness that the vote was legal. The adoption of laxer rules of evidence would affect both sides, and change the result very little, if at all. After a vote has been admitted, something more is required to prove it illegal than to throw doubt upon it. There ought to be proof which, weighed by the ordinary rules of evidence, satisfies and convinces the mind that a mistake has been made, and which the House can rest upon as a safe precedent for like cases. In regard to most of the alleged illegal votes on both sides, the proof, however plausible, falls short of the requirement.

The committee recommends the adoption of the resolution which is sent to the chair with this report.

*Resolved*, That the Hon. Jeremiah M. Wilson is entitled to the seat occupied by him in this House as the Representative from the fourth district of Indiana.

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## MINORITY REPORT.

April 9, 1872.—Mr. Arthur, from the Committee on Elections, presented the views of the minority of said committee:

This contest comes up from the fourth Congressional district of the State of Indiana.

The election occurred October 11, A. D. 1870. The reported official return to the State Board shows the following result:

| | |
|---|---|
| For contestee | 12,561 |
| For contestant | 12,557 |
| Majority for contestee | 4 |

Total vote cast, per official return, 25,118.

Pursuant to those returns, the executive of the State of Indiana, on the 26th day of October next after the election, issued the certificate to contestee, by virtue of which he now holds a seat in this House.

In the judgment of the minority, founded on facts proved in the record, there were errors in the polls and returns below, the correction of which conclusively established the fact that the contestant received a majority of the legal votes cast, and is, therefore, entitled to his seat in this House as the duly elected Representative of the fourth district of the State of Indiana on this floor.

We are under the impression that argument in a report of this nature is not its province; and that a statement of the issues made and the conclusions formed, succinctly and intelligibly, constitute about all that is practicable or desirable in this form, while the argument has its appropriate place in the arena of debate in the consideration of the report, preparatory to disposing of it.

This report, will, therefore, be brief, and be confined to a statement of the points and decisions thereon material to a proper consideration of the case as proved. And it will not be encumbered with matter immaterial or not proved.

MISCOUNTS.

Contestant alleges and proves that there were miscounts of the ballots to his prejudice in the three following precincts, to wit:

1. In the south precinct, in the county of Wayne, there were actually cast for him 528 votes, but by mistake in the official count and return, in the confusion and exhaustion consequent on the labors of election day and night, there were counted and returned for him only 516, and for contestee 516. Two several recounts of the ballots, carefully made within a few weeks after the election, by persons, some of whom were officers of the election, all of whom are unimpeached and credible witnesses, demonstrate that the return from this precinct should have been for—

| | |
|---|---|
| Contestant | 528 |
| Contestee | 517 |
| Mistake against contestant | 11 |

2. In Green Township, in the county of Wayne, there were actually cast for contestant 71 legal votes, but only 70 counted for him—mistake against contestant, 1.

And there were returned for contestee 159, when in point of fact there were cast for him only 155. Total mistake in this precinct against contestant, 5 votes.

The ballots in this precinct, shortly after the election, were carefully scrutinized, and *three* several times carefully counted by officers of the election, and other unimpeachable and credible witnesses, and on the last occasion by all the election board, save only one, and the result demonstrated that there were cast for contestee, not 159, but only 155; contestant, not only 70, but 71.

Total mistake in this precinct against contestant, 5.

3. In Noble Township, in the county of Rush, there were counted for contestee 149 votes, when, in point of fact, there were cast for him only 147. Mistake against contestant, 2 votes.

About one week after the election, the inspector of the election called the attention of one of the election clerks to this mistake apparent on both tally-sheets, which were exactly alike. It consisted as follows: The tally was kept in fives, four straight marks, and a fifth across the face of the other four (thus, ~~////~~). Now, in one of these places the number was three straight marks (thus, ///). These were counted five in the official returns. On the tally-sheets, one of which is in proof by an official copy,

sworn to, the mistake is patent; for there are 28 *fives*, 1 *four*, and 1 *three*, footed up and carried out 149.

The ballots and returns of those three precincts were at no time tampered with or changed, and are the identical ballots voted. Such are the allegations and facts as made and proved in this record.

Will the law give effect to a recount correctly made and satisfactorily proved? We say it will. And we say that upon the authority of numerous adjudged cases, and the preponderant weight of precedents in this House. Law, reason, and sound policy all concur in the rule, which is substantially to the following effect:

The House, by its constituted agents, will go behind all certificates and returns to inquire into and correct all mistakes in elections brought to its notice by a contest legally made. (*Chrisman* vs. *Anderson*, 2 *Dig.*, 329; *Sleeper* vs. *Rice*, 2 *El. C.*, 473, *and other authorities.*)

INELIGIBILITY OF JUDGES OF ELECTION.

Contestee has alleged and proved that some one or more of the acting judges of election at the following-named precincts were not at the time freeholders; that they were, therefore, ineligible; and that the entire vote and return of such precincts must be rejected, to wit:

1. Harrison Township, in the county of Wayne.
2. Cambridge City precinct, Jackson Township, county of Wayne.
3. Washington Township precinct, county of Rush.
4. Washington Township precinct, county of Wayne.
5. South precinct, township of Wayne, county of Wayne.
6. Second precinct, Jackson Township, county of Hancock.
7. Vernon Township precinct, county of Hancock.
8. Bath Township precinct, county of Franklin.
9. Center school-house precinct, Springfield Township, county of Franklin.
10. Mount Carmel precinct, Springfield Township, county of Franklin.
11. First precinct in Whitewater Township, county of Franklin.
12. Second precinct, same township and county.
13. Peppertown precinct, Salt Creek Township, county of Franklin.
14. Johnson's school-house precinct, same township and county.
15. Second precinct, township of Metamora, same county.
16. Butler Township precinct, same county.
17. Oldenburg precinct, Ray Township, same county.
18. Enochsburgh precinct, same township and county.
19. First precinct, township of Highland, same county.
20. Second precinct, same township and county.

And contestee has insisted that the question of ineligibility involved in these specifications is decisive of the case in his favor. By excluding the entire vote of the legal voters of those twenty precincts, he claims his majority will then be more than three hundred over contestant, even if "other matters attempted to be proven for contestant be taken in his favor."

The officers all acted under appointment; all acted in good faith; were all sworn; no objection at the time was raised; no other person claimed the position, and the entire people acquiesced in their official acts.

The law of Indiana required that every judge of election should be a freeholder.

Under the circumstances above recited, if a person acted as a judge

of election who at the time was ineligible to that position, for want of the qualification required by the statute, must the election of that precinct for that cause be held void, and the votes and returns be set aside and rejected?

Contestee says yes, and appeals to the law and the precedents. We say no; and we go further, and say that the great preponderance of both law and precedent is on the side of the negative of that question. The result of a very patient investigation of the election cases of this House is the conclusion on our part that the rule is substantially that—

Ineligibility or want of statutory qualification on the part of an officer of election, otherwise capable, and acting in good faith, and with the acquiescence of the voting public, will not, of itself, vitiate or impair the poll or return. (*Barnes* vs. *Adams*, *Dig. El. C.*, 760; *Eggleston* vs. *Strader*, *ibid.*, 897.)

CERTIFICATE—HENDRICKS TOWNSHIP.

1. Contestee alleged and proved that the law of the State of Indiana required the board of judges of the election to make out an attested certificate in written words of the number of votes each person received, &c., and return the same, together with the list of voters, and one of the tally-papers, to the county board; and that the board of judges of west precinct, township of Hendricks, county of Shelby, failed to return such certificate. The proof shows that this failure was an innocent inadvertence. The poll-lists, tally-papers, and ballots were all properly returned, and are unimpeached.

Contestee insists that the omission of that certificate vitiates that poll, and that the returns and votes of that precinct should be rejected from the count. And he insists upon it with great confidence, and cites authorities in support of the position, all of which we have carefully examined.

We respectfully submit that his authorities do not sustain his position in this case. And these, when carefully considered, along with those numerous other authorities directly in point, to which he has not referred, have brought us to a conclusion directly the opposite of that insisted on by contestee.

Is such a certificate indispensable? We say it is not, and so say the authorities. The rule as established by the courts and by the precedents of the House is substantially as follows:

In the absence of the certificate prescribed by law, recourse will be had to the poll-lists, the ballots, or other returns; and if from these, or any of them, the result can be ascertained, and there is no taint of fraud, effect will be given to the result precisely as though the certificate was present. (*Chrisman* vs. *Anderson*, 2 *El. C.*, 331–334; *Blair* vs. *Barrett*, 2 *El. C.*, 315.)

MISCOUNTS.

1. Contestee alleges that in Cambridge precinct, township of Jackson, and county of Wayne, the election board by a mistake gave contestant 381, when, in point of fact, there were cast for him only 378. Mistake against contestee, 3 votes. And they gave contestee only 363, when, in point of fact, there were cast for him 364. Mistake against contestee, 1. Total mistakes against contestee in this precinct, 4 votes. There is no proof in the record in support of this specification.

2. Contestee alleges that in north precinct, Wayne Township, in the

county of Wayne, the election board by mistake gave contestee only 878, when, in point of fact, there were cast for him 887; and they gave contestant 337, when, in point of fact, there were cast for him only 330. Mistake against contestee in this precinct, 16 votes. This specification is not proved.

### IRREGULARITY OF ELECTION BOARD.

Contestee alleges that at Mount Carmel precinct, in the county of Franklin, pending the election, the board frequently left the ballot-box, &c., unprotected, whereby he claims the election was discredited and annulled, and the entire vote should be rejected. The vote was for contestant 93, for contestee 73.

The officers occasionally stepped outside for a few moments, at intervals, when there was a pause in the voting, but there is a total failure of proof affecting the integrity or the accuracy of the polls.

### ILLEGAL VOTES PROVED BY CONTESTANT.

By the Indiana statute, the inspector of election is required, on receiving the ballot from the voter, to have it numbered on the back with figures to correspond with the number opposite the voter's name on the poll-lists.

The qualifications of the voter are: 1st. Six months' residence in the State next before the election; and, 2d, twenty days' *bona-fide* inhabitancy of the precinct next before the election.

But subject to this exception: "No person shall be deemed to have lost his residence in the State by reason of his absence on the business of the State or United States." (Sec. 4, art. 2, Const. Ind.)

The following-named nine persons are proven to have voted illegally for contestee, and their ballots were produced in evidence:

1. David Holloway. He voted in the north precinct, Wayne Township, Wayne County. He left his dwelling-place in the south precinct in 1861, and entered the United States service. He had been out of the United States service for more than four years, and had not lived in Indiana since 1861, and his deposition has not been taken.

1st. His vote was illegal, because it was cast in the north precinct, when his last residence was in the south precinct.

2d. His vote was illegal, because he was not, at the time of voting, a resident or *bona fide* inhabitant of the State or precinct, either in law or in fact.

2. John Lynch. He voted in the north precinct, Wayne Township, Wayne County. He left Indiana and entered the United States service in 1861, and continues in it. His deposition has not been taken. During all that time he has been residing in Washington. To bring him within the exception of the Indiana constitution above quoted, the *onus* was upon the contestee to show the intent to return to reside, in order to overcome the opposite presumption arising from the fact of a continuing residence elsewhere for more than nine years. This proof is not in the case. But he is an illegal voter upon another ground. If he could legally vote at all in Indiana, there was but one place where that could be done, to wit, in the south precinct, where was his home when he entered the United States service and removed to Washington City.

3. Isaac Stewart. He voted in the Rushville Township precinct, Rush County, for contestee. The main facts in his case are substantially the same as in Holloway's case. Stewart had been removed from the United

States service in the spring preceding the election, and had not lived in Indiana since 1861. Lynch and Holloway were not sworn nor was Stewart.

4. D. P. Evans. He voted for contestee at the north precinct, in Wayne Township, Wayne County. Ballot produced. He was clearly a non-resident of Indiana, and at the time of voting was a resident of Oxford, Ohio.

5. J. W. Barton. He was a non-resident of Indiana at the time of voting.

6. Jonathan Dunbar was by the weight of the evidence a minor, certainly a non-resident of the precinct at the time of voting.

7. William Hinshaw, at the time of voting was a non-resident of the precinct, was a laboring man, and returned every Saturday night to his dwelling-house in Knightstown, Henry County, outside of the district.

8. Oliver Carson. He was a non-resident of the precinct, and lived in the county of Boone at the time of voting in Hancock.

9. John R. McKinsey. He was a non-resident of Indiana. Had moved to Kansas in October, 1869.

### ILLEGAL VOTES FOR CONTESTEE—BALLOTS NOT PRODUCED.

The following-named thirteen persons are proven to have been illegal voters. Each of them voted for contestee. This is testified to by credible witnesses, who examined their ballots and the numbers on them, and also examined their names on the poll-lists, and found the numbers in every case to correspond. But the ballots were not produced in evidence and their non-production was not accounted for, and they are therefore not deducted from contestee's vote:

Abijah Bales, Charles Sawyer, David Benizieu, J. L. Yaryan, John Bell, Louis Raridan, S. G. Goodwin, Perry Williams, Robert Gilbreath, David Rickets, Daniel Forrest, J. T. Floy, and Martin Jones.

### ILLEGAL VOTES PROVED BY CONTESTEE.

The following-named seven persons are proven to have voted for contestant, and their ballots produced:

1. Charles Savoy, Jefferson Township, Wayne County.
2. J. Quinn, Cambridge poll, Jackson Township, Wayne County.
3. M. Stafford, Hanover Township, Shelby County.
4. William Kimmer, Dublin, Jackson Township, Wayne County.
5. C. Wilkinson, Brandywine Township, Shelby County.
6. J. H. Lake, second precinct, Whitewater Township, Franklin County. (Lake was a legal voter, but he was sick in bed and not at the polls, and the judges of election went to him and received his ballot, and carried it back with them and put it in the box.)
7. George Anthony, Brooksville Township, Hancock County.

### ILLEGAL VOTE FOR CONTESTANT—BALLOT NOT PRODUCED.

1. John Shore, Vernon Township, Hancock County.

### AMBIGUITY IN THE BALLOT.

At the precinct in the township of Brandywine, county of Shelby, two ballots were counted for contestee which had on them for Congress merely the letters "Wilson." On their face the ballots were ambiguous

and unintelligible. The defect was curable by extrinsic evidence to explain and apply them; it has not been offered, and the defect is fatal to both ballots, and they are deducted from contestee's vote in this count.

RESULT.

| | |
|---|---|
| Mistakes against him, alleged by contestant | 4,671 |
| Mistakes against him, alleged by contestee | 1,300 |

MISTAKES AGAINST CONTESTANT PROVED.

| | | |
|---|---|---|
| South precinct, Wayne County, miscount against contestant | | 12 |
| Green Township, Wayne County, miscount against contestant | | 5 |
| Noble Township, Rush County, miscount against contestant | | 2 |
| Brandywine Township, Shelby County, miscount against contestant | | 2 |
| Total miscounts against contestant | | 21 |
| Total illegal vote for contestee proved by ballot | | 9 |
| Official return for contestant | 12,557 | |
| Add miscount against contestant | 21 | |
| Total votes for contestant | 12,578 | |
| Deduct illegal votes for contestant | 7 | |
| True legal vote for contestant | | 12,571 |

*Contra.*

MISTAKES AGAINST CONTESTEE PROVED.

| | | |
|---|---|---|
| South precinct, Wayne County, miscount against contestee | 1 | |
| Mount Carmel, Franklin County, illegally rejected | 1 | |
| Total against contestee | 2 | |
| Official return for contestee | 12,561 | |
| Add miscounts, &c., against contestee | 2 | |
| Total votes for contestee | 12,563 | |
| Deduct illegal votes for him | 9 | |
| True legal vote for him | | 12,554 |
| Legal majority for contestant proved | | 17 |

W. E. ARTHUR.
E. Y. RICE.
W. M. MERRICK.

And they recommend the adoption of the following resolutions:

*Resolved*, That Jeremiah M. Wilson was not duly elected and is not entitled to the seat in the Forty-second Congress from the fourth district of the State of Indiana.

*Resolved*, That David S. Gooding was duly elected and is entitled to the seat in the Forty-second Congress from the fourth district of the State of Indiana, and should be admitted to his seat.

## W. A. BURLEIGH AND S. L. SPINK vs. M. K. ARMSTRONG.—TERRITORIAL DELEGATE OF DAKOTA.

Alleging that the returns should be rejected by reason of holding the election upon United States military reservations and Indian reservations, and illegal votes received from non-residents and Indians.

The committee excluded all the votes cast within existing Indian reservations. It was held that there was nothing in the terms of the organic act nor in the general policy of the law forbidding an election to be held within the military reservations of Fort Sully and Fort Randall.

The votes of Indians rejected and returns purged.

Committee reported in favor of the sitting Delegate, Hon. Moses K. Armstrong.

The House adopted the report April 12, 1872.

Authorities referred to: United States Statutes at Large, 12, page 239.

April 12, 1872.—Mr. Merrick, from the Committee on Elections, made the following report:

*The Committee on Elections, to whom was referred the case of the election of Delegate from the Territory of Dakota to the Forty-second Congress, in which the seat of M. K. Armstrong is contested by W. A. Burleigh and S. L. Spink, respectfully submit the following report:*

By the certified returns of the election held in the Territory of Dakota on the 11th of October, 1870, the vote stood: For Armstrong, 1,198; for Burleigh, 1,102; and for Spink, 1,023, as appears by the certified abstract of the returns from the office of the secretary, as follows:

ABSTRACT OF VOTES.

| Counties. | Spink. | Burleigh. | Armstrong. | D. Burleigh. | Moody. |
|---|---|---|---|---|---|
| Union | 277 | 216 | 323 | 3 | ..... |
| Clay | 210 | 248 | 176 | ..... | 1 |
| Yankton | 214 | 319 | 336 | ..... | ..... |
| Bonhomme | 20 | 131 | 72 | ..... | ..... |
| Hutchinson | ..... | 1 | 7 | ..... | ..... |
| Lincoln | 150 | 72 | 21 | ..... | ..... |
| Minnehaha | 110 | 24 | 4 | ..... | ..... |
| Pembina | 16 | 2 | 38 | ..... | ..... |
| Charles Mix | 2 | 79 | 126 | ..... | ..... |
| Buffalo | 21 | 9 | 55 | ..... | ..... |
| Fort Sully, attached to Charles Mix | 3 | 1 | 40 | | ..... |
| | 1,023 | 1,102 | 1,198 | 3 | 1 |

DAKOTA TERRITORY, YANKTON, *January* 25, 1871.

I certify that the above is the count of votes as received from the registers of deeds of above-named counties.

GEO. ALEX. BATCHELDER,
*Secretary.*

Both contestants allege that the returns from the precincts of Ellis, in Charles Mix County, and of Fort Sully, in the same county, should be rejected, because they were held upon United States military reservations; and that the returns from Buffalo, or Fort Thompson, should be excluded, because the same was held upon an Indian reservation. They also assail the returns and claim to purge them because of alleged illegal votes by non-residents and Indians at the above-named as well as at other precincts. By the law organizing the Territory of Dakota (12

Statutes at Large, p. 239), it is provided that the Territory of Dakota shall not include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Dakota until said tribe shall signify their assent to the President of the United States to be included in said Territory, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights by treaty, law, or otherwise, which it would have been competent for the government to make if the act had been passed." It is quite apparent from the terms of this organic act that it was not competent for the authorities of the Territory to hold an election or exercise any other jurisdictional act within any part of the Indian reservations embraced within the exterior bounds of the Territory, and the proof establishing the fact that the Buffalo, or Fort Thompson, precinct was established, and the election there held within an existing Indian reservation, the committee have excluded all the votes cast there from their computation. But with regard to the election held within the military reservations of Fort Sully and Fort Randall (or the Ellis precinct), the committee have reached the conclusion that there is nothing in the terms of the organic act nor in the general policy of the law forbidding an election to be held at such places. The contestants have insisted that the rule which disqualifies persons from voting within any State, who reside within forts or other territory to which the title and jurisdiction has been ceded by the State to the Federal Government, applies to the military reservations which have been designated by the Executive within the Territories belonging to the United States. But forasmuch as there is no conflict of sovereignty between the government and the Territory, and the latter holds all its jurisdiction in subordination to the controlling power of Congress, and the military reservations are not permanently severed from the body of the public lands, but are simply set apart and withheld from private ownership by an executive order to the Commissioner of the Land Office, and may be and often are restored to the common stock of the public domain, when the occasion for their temporary occupancy has ceased, at the pleasure of Congress, and which requires no concurrent act of any State authority to give it efficacy, the residents upon such reservations, although abiding thereon by the mere sufferance of the United States authorities, do not in any just sense cease to be inhabitants or residents of the Territory within which such military reserve may be situate. Such residents seem to the committee to have that same general interest in the welfare of the community in which they live and the same right to vote there as any of the workmen at the arsenal or navy-yard in Washington City, who may be allowed to sojourn within their limits, have to vote at elections within the District of Columbia for officers of its Territorial government, or for a Delegate in Congress from that District. Allowing, then, the validity of the votes cast at the two precincts above named, the vote of the respective claimants stands as follows:

For Armstrong, 1,143; for Burleigh, 1,093; for Spink, 1,002. Having arrived at the above result upon the face of the returns, the committee proceeded to examine the various votes which were challenged for cause. The evidence discloses that very many Indians and half-breeds from the Indian reservations, and other persons, non-resident, transiently in the Territory, were suffered and induced to vote at many of the precincts. Great irregularities and practices never to be defended were indulged

in by the friends of the candidates, but probably not more than were to have been anticipated from the character of many of the adventurers and half-civilized Indians and half-breeds to be found in all the frontier settlements. But the testimony does not bring home to the parties to this contest participation in those unlawful acts, nor does it appear that the votes of all were not about in equal proportion affected by them. So far as distinct and reliable testimony was collected as to specific votes given by illegal voters, the committee have found that, giving the utmost latitude of effect to the offered proof on the part of the contestants, they have impeached successfully two of the votes cast for the sitting member at Ellis precinct, viz: Wm. S. Ketchum and G. Burrett; at the Campbell precinct 18 votes, to wit: Lester Pratts, I. H. Bridgman, T. Randalls, John Lisson, John Davidson, A. Jannis, D. Gallineaux, E. Swallow, S. F. Estis, C. Bernard, L. Moreau, T. W. Parkham, I. H. Bigelow, Joseph Price, Q. Jannis, James Snageman, William Hurston, and G. R. Sherman; at Emanuel precinct, 1 vote: W. Arconge; and at Yankton precinct, 2 votes, viz: A. L. McCarty and C. T. Bledsoe; making in all 23 illegal votes found to have been cast for the sitting member. Deducting this number from the purged returns, as before stated, there remains to the sitting member a clear plurality of 27 votes over Burleigh and of 118 over Spink, and this without going into any scrutiny of individual illegal votes cast for either contestant.

Your committee, therefore, recommend the adoption of the following resolution:

*Resolved*, That Moses K. Armstrong was duly elected and is entitled to retain his seat in the Forty-second Congress as Delegate from the Territory of Dakota.

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## D. C. GIDDINGS vs. W. T. CLARK.—THIRD DISTRICT OF TEXAS.

Rejecting application for an extension of time by the sitting member, and assigning reasons therefor.

The failure of an officer, either by mistake or design to certify a return should not be allowed to nullify an election or change the result, if other and satisfactory evidence is forthcoming to show what the vote actually was.

The numbering of the ballots cast, in the absence of a statute expressly so declaring, does not of itself invalidate the election unless some injury is shown to have resulted to the party complaining.

Two separate voting-places, within the limits of one election precinct, one for white men, the other for colored men, declared illegal.

Committee reported in favor of the contestant, D. C. Giddings.

The House adopted the report without division May 13, 1872.

D. C. Giddings sworn in May 13, 1872.

Authorities referred to: McKenzie *vs.* Braxton, Forty-second Congress.

May 7, 1872.—Mr. McCrary, from the Committee on Elections, made the following report:

The election in question occurred on the 3d, 4th, 5th, and 6th days of October, 1871, and consequently the credentials of the sitting member were not presented until the opening of the present session of Congress.

The certificate of the governor showed that, by the returns made to him by the proper county officers, the contestant was apparently elected by a majority of 3,016 votes, but that the votes cast in several counties

and voting-precincts had been rejected for reasons set forth in the certificate. A question arose as to the right of the sitting member, *prima facie*, to the seat under this certificate, which was decided in his favor by the House, and he was sworn in on the 10th day of January last.

Notice of contest was duly served and answered, and the House, in pursuance of an agreement between the parties, ordered that the sixty days allowed by law for taking testimony should commence on the first day of February.

The contestant proceeded with diligence to take testimony within the time thus fixed, but the sitting member has failed to take any testimony in the manner provided by law, and the order of the House to sustain the allegations of the answer or to rebut those of the notice. The time for taking testimony having expired on the 1st day of April, the sitting member, on the 24th of April, came before your committee with a motion for an extension of time in which to take testimony on his behalf. This motion was based upon the affidavits of the sitting member and numerous other persons. These affidavits state in substance and in general terms that a combination was formed among the friends of contestant to indict the officers of election in the several counties upon charges of a violation of the election laws, and thus to inaugurate a system of persecution against the sitting member's friends and witnesses and deter the latter from testifying.

They also state that, in pursuance of this combination, indictments were found against the governor and secretary of the State of Texas, and against some of the election officers and others in the counties of Hill, Navarro, Grimes, Harris, and Washington. It is averred that the finding of these indictments produced such a feeling of alarm and danger in the district, that it was impossible to take testimony on behalf of the sitting member, but no overt act of violence is mentioned. The only specific fact given is the finding of the indictments aforesaid. The affidavits are exceedingly general in their terms, and, instead of stating facts, deal largely in the opinions or conclusions of the affiants.

After hearing arguments of counsel and carefully considering the question, your committee came unanimously to the conclusion that no further time ought to be granted to the sitting member for taking testimony, and as this decision is important in its bearing upon this case and as a precedent for future cases, some of the principal reasons for it will now be stated.

1. It must be borne in mind that the party now asking an extension is the sitting member. He is now, and has been during a large part of the term, exercising the functions and receiving the emoluments of the office in question. In a litigation of this character the thing in controversy grows daily less, and does not, as in most ordinary lawsuits, remain intact to be recovered by the successful party in the end. In this particular case the extension asked for would be very nearly equivalent to a final decision of the case in favor of the sitting member upon the merits. We are now near the close of the second session of the Congress. If the parties are to be sent back to Texas to take further testimony, of course no further action can be taken until the opening of the third and last session, which is of but ninety days' duration, and would be necessarily far spent before a final decision could be reached. It does not follow from these considerations that a sitting member can in no case be allowed an extension after the time allowed by law for taking testimony expires, but your committee think it does follow that no such extension should ever be granted to a sitting member unless it clearly

appears that by the exercise of great diligence he has been unable to procure his testimony, and that he is able, if an extension be granted, to obtain such material evidence as will establish his right to the seat, or that by reason of the fault or misconduct of the contestant he has been unable to prepare his case.

2. Applying this rule to the case before us, we find the affidavits for an extension insufficient. They do not state facts from which we can reasonably infer that it was impossible for the sitting member, by the exercise of proper diligence, to have taken testimony. As already stated, the only specific fact set forth is that certain persons were indicted, and among them some of the persons whom the sitting member intended to call as witnesses. It is not stated that any of the witnesses of the sitting member were arrested or imprisoned, or by any means placed beyond the reach of a subpœna. It is by no means certain that these indictments were found for the purpose of intimidating the sitting member's witnesses. It is hard to believe that the officers of the law and the grand juries in the several counties named could be used for such a purpose, especially when we consider that most of them were the political friends of the sitting member. But if such was the purpose, we are very clear that something more than the fact that the indictments were found must be proven, in order to show that a reign of terror prevailed sufficient to make it impossible to procure testimony, by the diligent use of the means provided by law for that purpose. The affidavits state that, in the opinion of the affiants, these indictments were found without cause, and that they were malicious. Your committee have no evidence before them upon which they are willing to decide as to the truth of this allegation; but conceding it to be true, it does not necessarily follow that no witnesses could have been found, had diligent effort been made to establish the allegations relied upon by the sitting member, if they are true.

3. But a more conclusive reason for denying the motion for an extension of time is found in the fact that the sitting member does not show that he made any effort whatever to procure testimony, much less that he used the diligence required. He does not show that he gave notice of his intention to take the testimony of a single one of the witnesses upon whose testimony he intended to rely but failed to get; nor does he show that he issued a subpœna for any one of said witnesses. He does not show that he took a single step toward the taking the testimony of these witnesses. If the sitting member had given the requisite notice to take the testimony of the witnesses relied upon, and had issued subpœnas for them, and had failed, after using all the means afforded by the law, to get their testimony, he might perhaps then be heard to ask an extension.

4. These affidavits state that a better feeling now exists in the district in question, insomuch that, if time be given, the testimony can be obtained; that the friends of the sitting member are no longer intimidated. If such is the fact, the sitting member should have produced the affidavits of some of these witnesses themselves, stating not only that during the sixty days for taking testimony in this case they were afraid to testify to facts within their knowledge, but also stating what facts are within their knowledge. The affidavits, however, which are relied upon are not the affidavits of the witnesses themselves, but those of attorneys and others who undertake to state what, in their opinion, the witnesses know, and why they have heretofore been unwilling to testify. If these witnesses were, as is alleged, free from intimidation at the time these affi-

davits were prepared, the affidavits of some of them should have been produced.

5. There are twenty-four counties in the district. It is alleged that fear and intimidation prevailed during the time for taking testimony in only five of them. Under the law, the sitting member had a right to take testimony anywhere in the district, and to subpœna witnesses to appear wherever he might choose therein. There were certainly places in some one or more of the nineteen counties in which no indictments were found, and in which no reign of terror prevailed, at which the sitting member could have taken his testimony. In this way he could have taken testimony without entering the counties of which he complains, except to summon his witnesses through an officer of the law. This he could have done, even if it was impossible to examine witnesses in the counties where the indictments were found, of which, as already seen, there is no sufficient evidence.

6. The affidavits relied upon are fatally defective in this, that they do not state the names of the witnesses whose testimony is wanted nor the particular facts which can be proven by their testimony.

The committee and the House had occasion to decide a question somewhat similar to the one here considered in the recent case of Boles *vs.* Edwards. The report in that case is referred to.

### THE CASE ON THE MERITS.

We must therefore examine and decide the case upon the testimony now before us. The House has already decided that the statute of Texas authorizes the board of returning officers, composed of the governor, secretary of state, and attorney-general, to revise the returns forwarded to them from the several counties, and, upon a showing of certain facts, to exclude such votes as they may deem illegal from the count. It was also decided that, this board having rejected certain votes in the exercise of the authority conferred by the statute, the presumption in the absence of proof is in favor of the validity of their action. We are now, however, to inquire whether, in the light of the evidence before us, we ought to sustain the action of this board of returning officers, and, if not, how many and what votes, rejected by them, we should receive. We proceed in this inquiry upon the idea that the presumption is in favor of the correctness of the official action of the board, and that we are to determine how far and in what cases this presumption has been overcome by the proof.

### BOSQUE COUNTY.

The vote of this county was rejected because, as stated in the governor's certificate, "no official returns were received." It is manifest, however, that something in the character of returns must have been received, because the number of votes cast for each candidate is stated in the certificate. Wherein the returns were, in the judgment of the board, fatally defective, does not appear from the certificate. It does appear, however, from the evidence, that John A. Biffle, who was registrar of Bosque County, and who conducted the registration, was removed shortly prior to the election, and one Thos. Ford appointed in his place; but that the former was not notified of his removal, and continued to act, while the latter failed to qualify, and made no attempt to discharge the duties of the office. It seems probable that the only objection to the returns was, that they were certified by Biffle, and not by Ford. If so, the defect was not fatal, because the former was certainly acting as

registrar under color of authority, and was at least an officer *de facto*, whose official acts, affecting third parties and the public, must be held valid. But, however this may be, the proof shows that the election was legally held, and that contestant received 457 votes, and the sitting member 77 votes. If the return was uncertified, it is competent to show, by other evidence, what the vote was. Upon this point, we repeat what was said in the case of McKenzie *vs.* Braxton, decided in the early part of the present session, as follows:

Of course, the returns of an election must be certified by the proper officers. If not so certified they prove nothing, and when offered in evidence, if objected to, they must be rejected. It was so held by the House in Barnes *vs.* Adams in the last Congress. It does not, however, necessarily follow that the vote cast at such an election is lost or thrown away. An uncertified return does not *prove* what the vote was—that is all. The duly certified return is the best evidence, but if it be shown that this does not exist, we doubt not secondary evidence would be admissible to prove the actual state of the vote.

The failure of an officer, either by mistake or design, to certify a return, should not be allowed to nullify an election, or to change a result if other and sufficient and satisfactory evidence is forthcoming to show what the vote actually was.

In relation to Bosque County, we have the uncontradicted testimony of the officers who conducted the election, showing what the result in fact was; and it is, therefore, not material to determine whether the returns were properly and regularly certified or not. The vote of this county must be received.

### BRAZOS COUNTY.

The vote of this county was rejected by the board, and the reasons for its rejection are thus stated in the certificate:

*Rejected.*—The tickets were marked with numbers, contrary to provisions of sec. 10, chap. 78, General Laws, fall session 12th legislature, 1870, thereby operating as a scrutiny upon the votes, and a restraint upon the freedom of voters. Further, that 49 persons of foreign birth had been permitted to register and vote without legal proof of naturalization.

By reference to the statute here referred to, it will be seen that it is made a misdemeanor for any judge of election to place any number or mark upon the ticket of any voter; but it is not declared that the vote of a legally qualified voter shall be rejected because his ballot is marked by the judges. We should not be inclined to put a construction upon this statute which would enable an officer of election to destroy the effect of a ballot cast in good faith by a legal voter, by placing a number or mark upon it. A ballot may be thus marked or numbered without the knowledge or consent of the voter, and it would be manifestly unjust that he should, in this way, be deprived of his vote.

We think it plain that, inasmuch as the statute affixes a penalty for marking a ballot, and does not expressly declare that a marked ballot shall be thrown out, the board erred in rejecting the vote of this county upon this ground. This precise point was decided in the late case of McKenzie *vs.* Braxton, already quoted from, and in which the committee used the following language, which is entirely applicable to the facts in this case:

We are further of the opinion that the numbering of the ballots cast at an election, in the absence of a statute expressly so declaring, does not of itself invalidate the election, unless some injury is shown to have resulted to the party complaining. In Virginia, the law which was in force until near the time of this election *required* the ballots to be numbered. A short time prior to the election in question, this provision was repealed. It seems that at a few precincts the officers of election were not advised of this repeal, and consequently numbered the ballots as they had been in the habit of doing before. Although it would be possible, from the numbering of the ballots, to ascertain how each person voted, it is not claimed in this case that this was done, or that the tickets were numbered for any such purpose, or for any improper or unlawful purpose whatever. We are, therefore, of the opinion that these votes should not be thrown out.

The statement that 49 persons of foreign birth were permitted to register and vote without legal proof of naturalization is not sustained by the proof, but is in fact flatly contradicted by the testimony of the officers of the election. The vote of this county must be received.

WASHINGTON COUNTY.

At the election held for this county at Brenham, the county-seat, two ballot-boxes were used. The board of returning-officers—to wit, the governor, secretary of state, and attorney-general—excluded from the count the votes cast at one of the boxes, and give their reasons as follows:

The votes received at the "white man's" place of voting—at what was called "the white man's ballot-boxes"—are rejected, because two voting-places are not allowed by law, and because that box was not presided over by even one lawful officer; also, because 458 aliens were registered on declaration of intention to become citizens, made by them in vacation, before a clerk, and not in term time, before a competent court, of whom all, or nearly all, voted at what was called "the white man's box," and for other sufficient causes. The vote cast at the lawful box is alone counted.

In the box thus rejected there were 64 ballots cast for the sitting member and 2,322 cast for contestant. The affidavits upon which the board predicated their action seem to have been such as the statute of Texas required, and, taken as true, showed that there were two separate voting-places; that one of these was for white and the other for colored voters, and that the former was not presided over by the officers of the law. These affidavits—if admissible as evidence on the trial of this case upon the merits at all, of which there is great doubt—are entitled to much less weight than testimony regularly taken in the presence of both parties, and where the witnesses may be cross-examined. We notice, too, that the affidavits are indefinite in this, that they do not state how far apart the two boxes were, nor whether they were in the same or separate rooms, nor who were the officers, or pretended officers, who presided over each. Turning, then, to the testimony regularly taken, we find the following facts established by the testimony of Peter Diller, register of voters, and also by that of each of the judges and clerks of the election, besides numerous other witnesses:

1. The officers who conducted the election were Tully Kemp, J. W. McCowan, and Charley C. Childs, judges and managers, and John Kemp, John Hackworth, Harry Hancock, and R. A. Havin, clerks.

2. The election was held in a room about sixteen or eighteen feet square, having two windows about twelve or fourteen feet apart, and a ballot-box was placed at each window.

3. The judges of the election had charge of both boxes, both being in the same room, and no particular member of the board had charge of either box exclusively. The boxes being both in the same room, as above stated, were within full view of all the judges. No "outsider" or unauthorized person had charge of either box.

4. The ballots of white voters were mostly taken at one window, and those of the colored voters at the other, though some of each class voted at both.

5. The practice of using two ballot-boxes has been followed in this county at all the elections since 1865, and the reason given for it is that, as all the voters of the county are required to vote at this poll, it is impossible to take all the votes at one box.

6. The boxes were changed at least once during the election, so that the box first used at one window was afterward used at the other, and *vice versa.*

Your committee cannot hesitate to say that these facts make one of two things inevitable: either the votes cast in both boxes must be counted, or both must be rejected. One is as legal and valid as the other; the officers of the election presided over the one as much as over the other, and whatever affects the validity of the one equally affects that of the other. Whether this election was valid or void is wholly immaterial, and therefore need not be decided, for if the vote of this county is all admitted, or all rejected—in either event it is fatal to the case of the sitting member. If the whole vote cast at both boxes be admitted it increases the vote of contestant, over the number counted for him by the returning-officers, 2,258 votes; if the vote cast at both boxes be rejected, the contestant thereby gains, over the vote allowed him by said board, 2,425 votes. The certified majority for the sitting member, being only 1,325, is largely more than overcome in either case. The validity of the votes of 458 aliens who are said to have been registered upon declarations of their intention to become citizens, made by them in vacation before a clerk, and not in term time before a competent court, need not be considered, for even conceding that these persons were not legal voters, and that to the number named they voted for contestant, it would not change the result.

LIMESTONE AND FREESTONE COUNTIES.

The vote cast in both these counties was rejected by the returning-officers, for the following cause:

*Freestone.*—Rejected. Acts of violence and intimidation and armed disturbance have been shown to have materially interfered with the purity and freedom of the election, thereby preventing such a number of the qualified electors therein from voting as would have changed the result of the election in that county if they had been permitted freely to vote. Further, that among those who voted at that election 163 persons had been permitted to register by proxy, contrary to law.

*Limestone.*—Rejected. Reasons, same as for Freestone, except as regards the 163 voters.

If the House shall concur with the committee in the views expressed above as to the election in Washington County, it will be unnecessary to consider other points in the case. We have, therefore, not considered as carefully as we might otherwise have done the evidence in relation to the counties of Limestone and Freestone. We are satisfied, however, that a large part of the vote of Limestone County was not cast. The colored voters generally failed to vote, so that only 28 votes were cast for Clark, to 1,153 for Giddings. That a state of excitement and fear existed in this county about the time of the election is clear. A collision occurred between some colored policemen and certain white men, which resulted in the death of one of the latter, and the wounding of one of the former. This produced great excitement, and was followed by a general uprising and arming of both whites and blacks. On the day of election the town where the election was held was occupied by an armed force under command of one Captain Richardson. Pickets were stationed on all the roads leading into town, and persons coming in to vote were obliged to obtain a pass from the military authorities. Although the witnesses say that all voters were permitted to come and go in peace, and that the freedmen were urged to vote, yet it is clear that they abstained from doing so for reasons which most men would consider good and sufficient.

As to Freestone County, the affidavits upon which the board rejected the vote are contradicted by the testimony of several witnesses, and we are therefore unable, from the evidence before us, to sustain the action of said board.

There are allegations of fraud made and insisted upon by contestant, and, among them, a charge that in Hill County 300 Giddings tickets were abstracted from the ballot-box, and the same number of Clark tickets put in their place, which is proven by the testimony of George S. Chambers, clerk of the election, who swears that he himself committed the fraud, with the connivance of the registrar who had charge of the ballot-box during the night following the first day of the election. If such a witness can be believed, the fraud is fully proven; and, if established, it adds 600 votes to the majority of the contestant. Inasmuch, however, as the committee are clearly of opinion that the contestant is entitled to the seat upon the decision of the questions presented by the rejection of the votes of the several counties of Bosque, Freestone, Limestone, and Washington, by the action of the returning-officers, we abstain from any discussion of other questions, and recommend the adoption of the accompanying resolutions:

*Resolved*, That W. T. Clark is not entitled to a seat in this House from the third Congressional district of the State of Texas.

*Resolved*, That D. C. Giddings is entitled to a seat in this House from the said third Congressional district of the State of Texas.

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## ISAAC G. McKISSICK vs. ALEXANDER S. WALLACE.—FOURTH CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

General irregularities in the conduct of election. Ballots uncounted for several days after election was held.

Committee reported in favor of sitting member, Hon. A. S. Wallace.

The House adopted the report, May 9, 1872.

May 7, 1872.—Mr. G. W. Hazelton, from the Committee on Elections, made the following report:

*The Committee on Elections, to whom was referred the above case, having had the same under consideration, unanimously report as follows:*

At the election which occurred on the 19th day of October, A. D. 1870, in the State of South Carolina, under the provisions of an act passed by the legislature of said State, and approved March 1, 1870, the sitting member, Alexander S. Wallace, claims to have received a majority of 3,304 votes, upon which he received the certificate of election, and was sworn in and took his seat as a member of the Forty-second Congress. The contestant sets forth in the notice of contest herein a variety of grounds or specifications on which he claims the election to have been irregular, and the certificate improperly awarded to the sitting member, and presents a large amount of testimony in support of the same.

Upon a careful examination of the testimony, the committee are constrained to say that it fails entirely to establish the specifications. It deals in generalities and statements based on hearsay; but is not sufficiently definite and tangible to warrant any action on the part of the committee assailing the apparent or *prima facie* right of the contestee to the seat. Indeed, there is no evidence of the actual vote certified in the several counties of the district, on which the certificate of election was predicated.

There is some reason for the belief that irregularities may have oc-

curred in some localities, but the evidence of the contestant falls short of determining to what extent these irregularities were carried, or affording any means of ascertaining their effect upon the actual vote of the district.

The law under which the election was held seems to be well calculated to cover, if not to encourage, fraud, inasmuch as it neither requires registration of the voters nor a public canvass of the votes at the close of the polls, but allows the managers of each precinct, or one of them, to retain possession of the boxes containing the ballots uncounted for three days, at the end of which time they are required to deliver them over to the commissioners of election for their county, together with the poll-list, and these latter officers may retain the boxes for ten days longer before making the canvass.

But the committee, having no power over this law, must content itself with simply calling attention to it.

The committee concur in the opinion that the contestee is entitled to retain the seat he occupies, and recommend the passage of the following resolution:

*Resolved*, That Alexander S. Wallace is entitled to retain the seat he now occupies as Representative from the fourth district of South Carolina in the Forty-second Congress.

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## BOWEN vs. DELARGE.—SECOND CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Frauds and irregularities in the conduct of the election.

At the same election when he claims to have been elected to this House, the contestant was chosen a member of the State legislature, the oath of office was administered, and he took his seat as a member of the house of representatives, thereby disqualifying himself under a provision of the constitution of the State as a national officer.

The committee also find that the sitting member is not entitled to the seat.

The House adopted the report, January 24, 1873.

January 18, 1873.—Mr. Hoar, from the Committee on Elections, made the following report:

*The Committee on Elections, to whom was committed the memorial of Christopher C. Bowen, contesting the right of Robert C. DeLarge to a seat in this House as Representative from the second Congressional district of South Carolina, respectfully report:*

The committee find, upon the whole evidence, that said DeLarge did not receive a majority of the votes legally cast at the election in said district, and is not entitled to a seat.

This case came on to be heard before the committee at the December session of 1871–'72. Mr. DeLarge then applied for a postponement, and for leave to take further testimony, on the ground that the counsel employed by him to prepare his cause and take testimony in his behalf had possession of the evidence, and refused to surrender the same to be used before the committee, and further that said counsel had been tampered with and bribed by said Bowen to act for him. The committee found both these allegations to be proved. Some of the committee are of opinion that this proceeding, which would furnish ground for the expulsion of the contestant, if he were a member, would justify a

There are allegations of fraud made and insisted upon by contestant, and, among them, a charge that in Hill County 300 Giddings tickets were abstracted from the ballot-box, and the same number of Clark tickets put in their place, which is proven by the testimony of George S. Chambers, clerk of the election, who swears that he himself committed the fraud, with the connivance of the registrar who had charge of the ballot-box during the night following the first day of the election. If such a witness can be believed, the fraud is fully proven; and, if established, it adds 600 votes to the majority of the contestant. Inasmuch, however, as the committee are clearly of opinion that the contestant is entitled to the seat upon the decision of the questions presented by the rejection of the votes of the several counties of Bosque, Freestone, Limestone, and Washington, by the action of the returning-officers, we abstain from any discussion of other questions, and recommend the adoption of the accompanying resolutions:

*Resolved*, That W. T. Clark is not entitled to a seat in this House from the third Congressional district of the State of Texas.

*Resolved*, That D. C. Giddings is entitled to a seat in this House from the said third Congressional district of the State of Texas.

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## ISAAC G. McKISSICK vs. ALEXANDER S. WALLACE.—FOURTH CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

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Committee reported in favor of sitting member, Hon. A. S. Wallace.

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Upon a careful examination of the testimony, the committee are constrained to say that it fails entirely to establish the specifications. It deals in generalities and statements based on hearsay; but is not sufficiently definite and tangible to warrant any action on the part of the committee assailing the apparent or *prima facie* right of the contestee to the seat. Indeed, there is no evidence of the actual vote certified in the several counties of the district, on which the certificate of election was predicated.

There is some reason for the belief that irregularities may have oc-

curred in some localities, but the evidence of the contestant falls short of determining to what extent these irregularities were carried, or affording any means of ascertaining their effect upon the actual vote of the district.

The law under which the election was held seems to be well calculated to cover, if not to encourage, fraud, inasmuch as it neither requires registration of the voters nor a public canvass of the votes at the close of the polls, but allows the managers of each precinct, or one of them, to retain possession of the boxes containing the ballots uncounted for three days, at the end of which time they are required to deliver them over to the commissioners of election for their county, together with the poll-list, and these latter officers may retain the boxes for ten days longer before making the canvass.

But the committee, having no power over this law, must content itself with simply calling attention to it.

The committee concur in the opinion that the contestee is entitled to retain the seat he occupies, and recommend the passage of the following resolution:

*Resolved*, That Alexander S. Wallace is entitled to retain the seat he now occupies as Representative from the fourth district of South Carolina in the Forty-second Congress.

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## BOWEN vs. DELARGE.—SECOND CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Frauds and irregularities in the conduct of the election.

At the same election when he claims to have been elected to this House, the contestant was chosen a member of the State legislature, the oath of office was administered, and he took his seat as a member of the house of representatives, thereby disqualifying himself under a provision of the constitution of the State as a national officer.

The committee also find that the sitting member is not entitled to the seat.

The House adopted the report, January 24, 1873.

January 18, 1873.—Mr. Hoar, from the Committee on Elections, made the following report:

*The Committee on Elections, to whom was committed the memorial of Christopher C. Bowen, contesting the right of Robert C. DeLarge to a seat in this House as Representative from the second Congressional district of South Carolina, respectfully report:*

The committee find, upon the whole evidence, that said DeLarge did not receive a majority of the votes legally cast at the election in said district, and is not entitled to a seat.

This case came on to be heard before the committee at the December session of 1871-'72. Mr. DeLarge then applied for a postponement, and for leave to take further testimony, on the ground that the counsel employed by him to prepare his cause and take testimony in his behalf had possession of the evidence, and refused to surrender the same to be used before the committee, and further that said counsel had been tampered with and bribed by said Bowen to act for him. The committee found both these allegations to be proved. Some of the committee are of opinion that this proceeding, which would furnish ground for the expulsion of the contestant, if he were a member, would justify a

refusal to permit him to proceed with the contest, or to award him the seat.

An opportunity to take further testimony was granted to the sitting member, and for that purpose the case was postponed to the present session of Congress.

On examination of all the testimony, and the arguments on both sides, some of the committee are of opinion that the frauds and irregularities in the conduct of the election were so great that it is impossible to determine who had the majority of the ballots lawfully cast, and that for that reason the seat should be declared vacant.

It further appeared that on the 19th day of October, 1870, on the same day when he claims to have been elected to this House, the contestant was chosen a member of the house of representatives of the State of South Carolina for the period of two years, and on the 1st day of November, 1872, took the oath of office, and took his seat as a member of said house.

It further appeared that in the fall of 1872 said Bowen was elected sheriff of Charleston, South Carolina, for the term of four years, and on the 19th of November, 1872, took the oath of office and entered upon the duties of the same, which office he now holds. These offices are, in their nature, incompatible with the office of member of this House, and are expressly declared to be so by the constitution of South Carolina.

Some of the committee are of opinion that the acceptance of these offices by Mr. Bowen disqualifies him from the further prosecution of a claim to a seat in this House, and from taking a seat therein, if he shall be found to have been duly elected.

The committee are unanimous in finding all the facts herein reported.

They are not unanimous in holding that each one of the reasons aforesaid is sufficient of itself to disqualify the contestant.

But they are unanimously of opinion, on the whole case, that Mr. Bowen is not entitled to the seat, and in recommending the adoption of the following resolves:

W. E. ARTHUR.
GEO. F. HOAR.
WM. M. MERRICK.
G. W. HAZELTON.
GEO. W. McCRARY.
E. Y. RICE.

*Resolved*, That Robert C. DeLarge is not entitled to retain the seat now held by him as a member from the second Congressional district of South Carolina.

*Resolved*, That Christopher C. Bowen is not entitled to the seat claimed by him as Representative from the second Congressional district of South Carolina.

NOTE.—The following is the provision of the constitution of South Carolina referred to in the foregoing report and of the oath of office therein prescribed for members of the legislature and other civil officers:

SECTION 28. No person shall be eligible to a seat in the general assembly while he holds any office of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia, magistrates, or justices of inferior courts, while such justices receive no salary. And if any member shall accept or exercise any of the said disqualifying offices he shall vacate his seat: *Provided*, That this prohibition shall not extend to the members of the first general assembly.

SECTION 30. Members of the general assembly and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar before they

enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm, as the case may be) that I am duly qualified, according to the Constitution of the United States and of this State, to exercise the duties of the office to which I have been elected (or appointed), and that I will faithfully discharge, to the best of my abilities, the duties thereof; that I recognize the supremacy of the Constitution and the laws of the United States over the constitution and laws of any State, and that I will support, protect, and defend the Constitution of the United States, and the constitution of South Carolina as ratified by the people on the —— day of ———, 1868. So help me God." And the president of this convention is authorized to fill the blanks in this section whenever he shall receive satisfactory information of the day on which this constitution shall be ratified.

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## SILAS L. NIBLACK vs. JOSIAH T. WALLS.—FIRST CONGRESSIONAL DISTRICT OF FLORIDA.

Rejection of various county returns by the State canvassers on charges of irregularity, intimidation, and fraud.

The entire vote in these counties was recanvassed and the result obtained from evidence of legal votes cast.

Where a legal voter offers to vote and is prevented by fraud, violence, or intimidation from depositing his ballot, his vote should be counted.

The committee reported in favor of the contestant, Hon. Silas L. Niblack.

The House adopted the report January 29, 1873.

Silas L. Niblack sworn in January 29, 1873.

Authorities referred to: Norris *vs.* Handley, Forty-second Congress.

January 21, 1873.—Mr. McCrary, from the Committee on Elections, made the following report:

The State canvassers certify that the sitting member received 12,439 votes and the contestant 11,810, showing a majority for the sitting member of 629. But in reaching this result they rejected the returns from the following counties:

| | Niblack. | Walls. |
|---|---|---|
| La Fayette | 152 | .... |
| Suwannee | 318 | 230 |
| Taylor | 177 | .... |
| Calhoun | 101 | 62 |
| Sumter | 314 | 60 |
| Manatee | 153 | .... |
| Brevard | 30 | 3 |
| Monroe | 359 | 428 |
| | 1,604 | 783 |

The sitting member admits that by virtue of the waiver of certain technical objections made by the contestee, the returns of Suwannee, Calhoun, Sumter, and Monroe Counties are to be accepted by the committee and the House.

No question is made in the argument upon the returns of Taylor County, and we think none can be made.

This narrows our inquiry, so far as it relates to the rejection of county returns, to the counties of La Fayette, Manatee, and Brevard.

### LA FAYETTE COUNTY.

The returns from this county show 152 votes for contestant and none for the sitting member. The evidence taken shows that the county canvassers rejected three of the precincts of the county and counted but two.

This return is rendered worthless by the testimony of William D. Sears, sheriff of La Fayette County, and a member of the board of county canvassers.

This witness swears that at New Troy precinct, which is one of the two precincts counted, there were at least 42 votes cast and counted out for the sitting member; a fact he knows from having been present at the counting of the vote, and yet by the return every vote is given to contestant.

The same facts, in substance, are shown by the evidence of Redden B. Hill, another member of the board of canvassers. (See pages 11 to 14, inclusive, of evidence.)

Other objections are raised to this return, but they need not be considered, for this testimony successfully impeaches it, and shows that it is tainted with fraud, and must therefore be rejected.

We are left, then, to the inquiry, what votes have been proven by evidence outside of this return?

Upon looking into the evidence upon this point, we find that there is no proof whatever as to the actual state of the vote at the precincts of New Troy and Summerville, which are the two which purport to have been included in said return, except the proof, already mentioned, that the sitting member received at New Troy at least 42 votes. The vote of these two precincts, in which contestant claims 152 votes, must therefore be rejected, because the return is shown to be void for fraud, and no secondary evidence is offered to take its place.

It is suggested by counsel that we might allow the 152 votes which, according to this return, were cast for contestant, and also allow the sitting member the 42 votes which are shown to have been cast for him and not returned. But the committee hold that, it having been shown that the return is fraudulent and false in a matter so material as the suppression altogether of the whole of the sitting member's vote, it cannot be received for any purpose.

The contestant cannot complain of this ruling, for he took the testimony of several of the election officers of this county, and had notice of the fraudulent character of these returns, and yet chose to rely upon them, and failed to inquire of a single witness as to the actual vote of these precincts.

Testimony has been taken to show the actual vote in the three precincts rejected by the canvassers, and with the following result:

| | Niblack. | Walls. |
|---|---|---|
| Cook's Hammock precinct | 16 | None. |
| California precinct | 18 | None. |
| Governor's Hill precinct | 34 | None. |
| | 68 | |

As counsel for the sitting member concedes that there is sufficient proof of these votes, we need not refer to the evidence.

## MANATEE COUNTY.

The returns from this county were thrown out for the following reasons:

1st. Because the returns made by the county board, which by the statute are required to be duplicates, are not such. One return states that the board met and canvassed the votes "on the 29th day of November, 1870," while the other states that the board met and canvassed the vote "on the 1st day of December, 1870," and the former is dated November 29 and the latter December 1.

2d. Because the vote of said county was not canvassed and the returns made out and forwarded to the State officers authorized to receive them within twenty days from the day of election, as required by statute.

3d. Because said returns were not forwarded by mail, addressed to the secretary of state and governor, as expressly required by statute, but were in fact sent in an envelope addressed to contestant, by a private messenger, and delivered to, and opened by, one W. H. Pearce, of Polk County, who afterward placed it in the hands of the board.

These objections were considered by your committee at the last session of Congress, and it was considered by the committee very desirable to obtain more reliable evidence as to the actual vote cast in this county.

It was thought that it would be unsafe to establish a precedent of accepting as evidence a return which, instead of being transmitted from the county to the State board by mail, as the law requires, was sent by the hand of a private individual, and by him delivered to one of the candidates, to be by him delivered to the State board.

Accordingly, your committee recommended, and the House, on the 29th of May last, adopted the following resolution:

"*Resolved*, That the contested election case of Niblack *vs.* Walls be continued until the next session of this Congress, and that in the mean time the parties have leave to take further evidence as to what was the true vote cast in the counties of Brevard and Manatee, and Yellow Bluff precinct, in Duval County, and also as to whether the election in said counties and in said precinct was conducted fairly and according to law."

Under this resolution the sitting member has taken no evidence, but the contestant has called and examined E. E. Mizell, county judge, and John F. Bartholf, clerk of Manatee County, and who were two of the three canvassing officers for that county.

These witnesses each identify a paper shown them as a true copy of the return as made out by them as canvassing officers.

The copy is identical with the return which was rejected by the State board, the difference of one day between the dates of the two papers filed as duplicates being considered immaterial.

This evidence seems to be sufficient to show that the returns from this county were not tampered with, and that, notwithstanding the irregular and illegal mode adopted for their transmission from the county to the State board, they are in fact correct and reliable.

This return is also certified (as well as sworn to) by the clerk of the county, who, by the statute of that State, is the legal custodian of the original record of the canvass.

The vote of this county should therefore be counted.

### BREVARD COUNTY.

The statute of Florida requires that the returns shall be signed by the judge of the county court, the clerk of the circuit court, and one justice of the peace.

The return from this county relied upon as proof of the vote of the county is signed by but one of these three officers, the county judge.

The committee are of opinion that where the law requires the certificate to be made by three officers, a majority at least must sign to make the certificate evidence.

This is not a merely technical rule; it is substantial, because the refusal or failure of a majority of the board to sign the return raises a presumption that it is not correct.

It is fair to infer that if it had been free from objection a majority of the board at least would have signed it.

It is enough, however, to say that the law requires the certificate of the three officers, and all the authorities agree that at least two must certify or the certificate is inadmissible.

Although leave was given at the last session to take further evidence with regard to this county, none has been taken.

We hold, therefore, that it was the duty of the contestant to have proven the vote of the county by competent evidence, and as he has not done so the votes alleged to have been cast therein, to wit, 30 for Niblack and 3 for Walls, cannot be admitted.

### GADSDEN COUNTY.

The sitting member claims that 33 legal voters offered to vote for him at Quincy, in Gadsden County, and that they were prevented from so doing by fraud, violence, or intimidation, and he asks that their votes be counted as if cast for him.

We are satisfied from the evidence that there was an organized effort on the part of the friends of contestant to prevent a full vote being cast at this poll for the sitting member, and that it was partially successful.

This conspiracy was carried out by creating a disturbance at the election by threats of violence and the exhibition of deadly weapons, and particularly by crowding about the polls in such numbers as to prevent many colored voters from reaching the polls to deposit their ballots, and with this intent.

This conspiracy was led by one A. K. Allison, or at least he was conspicuous in it, and for his connection with it he has since been indicted by a grand jury, and tried and convicted before a jury on the charge of conspiracy with others to prevent certain citizens from exercising their right to vote, and of carrying out such conspiracy by threats, violence, and force.

It is insisted on behalf of contestant that the only remedy for violence and intimidation practiced at an election is the rejection of the poll or polls at which the violence occurs.

This remedy in the present case would only add to the injury, inasmuch as the sitting member received a majority, and this shows the necessity for some other remedy.

This is to be found in the rule, which is well settled, that where a legal voter offers to vote for a particular candidate, and uses due diligence in endeavoring to do so, and is prevented by fraud, violence, or intimidation from depositing his ballot, his vote should be counted.

The principle is that the offer to vote is equivalent to voting.

We find in the record of the testimony of twenty-nine witnesses, each one of whom testifies that he offered to vote for Mr. Walls and made the proper effort to do so, and was prevented.

See pages 71 to 90, inclusive, of the evidence. We are of opinion that these twenty-nine votes should be counted for the sitting member.

### FORT OGDEN.

Under the leave granted by the House, the contestant has also proven the vote of Fort Ogden precinct in Manatee County (rejected by county canvassers), to wit, thirty-nine votes for contestant, and these must also be counted for him.

*Votes proven.*

It is conceded also that contestant has proven the following votes, which were cast in Duval County and not included in the county returns:

| | Niblack | Walls. |
|---|---|---|
| Mayport precinct | 28 | 8 |
| Baldwin precinct | 50 | 4 |

LAKE CITY, COLUMBIA COUNTY.

The sitting member asks that the vote of City Hall precinct, at Lake City, Columbia County, be rejected upon the ground of intimidation and violence. We do not find any allegation in the answer which covers this point; but, waiving this consideration, let us look into the evidence.

It does not appear that there was actual violence at the polls.

All the voters of the county were required to vote at Lake City, and as some of them had to travel a long distance to reach that place, a large number assembled there the night previous to the election, and on that night there was a disturbance, which occurred as follows:

The colored people held a meeting, and after its close they formed in procession and marched through the streets. In the course of this march they came in collision with a crowd of white people. Much harsh language was used, and a personal conflict between a colored and a white man ensued. This, however, was of no great consequence, and was very soon quelled, when the procession moved on its way. After this there was some firing of guns—probably commenced by some one firing upon the procession—wounding one of the colored men slightly. A number of shots were fired by both parties, but no one except the colored man above mentioned was injured. By the efforts of the better class of citizens, both white and colored, this disturbance was speedily quelled. It is thought by some of the witnesses that a number of voters, principally colored men, were afraid to go to the polls on election-day because of these disturbances of the previous night; but as to the number of persons thus deterred, and as to what, if any, efforts they made to exercise their right, the evidence is wholly unsatisfactory. One witness puts the number at "several," while another estimates it at forty. The number who were intimidated (with or without sufficient reason) was evidently not so great as to justify the rejection of the entire poll. By the use of proper diligence the sitting member could have called the voters themselves, or some of them, and could have thus shown their number and the facts as to their intimidation and offer and efforts to vote.

In this case, as in the recent case of Norris *vs.* Handley, the proof of intimidation being unsatisfactory, we deem it proper to refer to the report of the Census Bureau for 1870, for the purpose of determining whether an unusually large proportion of the voting population have failed to vote. From this source we learn that in a population of 1,397 male citizens over the age of 21 years in Columbia County, 1,181 votes were cast, leaving but 216 who did not vote. This is an ordinarily full vote, as will be seen by reference to the statistics of elections; and it leaves but a small margin, if any at all, over and above the number who habitually fail or neglect to vote. At all events, it is perfectly clear that, in view of the finding of your committee upon other points in the case, the small number of votes which, by an extremely liberal con-

struction of the evidence, might be excluded on the ground of intimidation at this poll, cannot affect the result. If we allow 10 per cent. of the whole voting population as the number who remained away from the polls for ordinary causes, there will remain but 77 persons who could have been kept away by fear.

JACKSON COUNTY.

There were disturbances at the polls in Marianna, where three polls were opened, and where the whole county voted. One or two personal collisions occurred, some harsh language was used, and some persons were, doubtless, frightened away; but as to the number who left, and as to whether they left without voting, and as to the candidate for whom those who left without voting intended to vote, the evidence is wholly unsatisfactory. Several witnesses are called on the part of the sitting member, who testify that, in their opinion, from 100 to 200 colored persons were deterred from voting; but this is a mere conjecture, and the census, already referred to, shows that it is wholly incorrect. By the census report of 1870, it appears that at the time the census was taken (which was but a short time prior to the election) there were in the county of Jackson 1,879 male citizens over the age of twenty-one years, and the returns before us show that 1,752 votes were actually cast, leaving only 127 voters who failed, from all causes, to exercise their right. This is an exceedingly small percentage, being less than ten per cent., and shows conclusively that the allegation that some 400 voters were intimidated, and thereby deprived of the privilege of voting, is not true. On the contrary, we must conclude, in view of the unusually large vote polled, that nothing can be deducted from the vote returned for the contestant on the ground of intimidation in this county.

Having now considered all the material questions presented, it remains only for us to sum up the result, as determined by the foregoing views, which is as follows:

| | Niblack. | Walls. |
|---|---|---|
| Canvassed vote | 11,810 | 12,439 |
| Suwannee County | 318 | 230 |
| Taylor County | 177 | ..... |
| Calhoun County | 101 | 62 |
| Sumter County | 314 | 60 |
| Manatee County | 153 | ..... |
| Monroe County | 359 | 428 |
| Cook's Hammock | 16 | ..... |
| California | 18 | ..... |
| Governor's Hill | 34 | ..... |
| Mayport | 28 | 8 |
| Baldwin | 30 | 4 |
| Gadsden County | ..... | 29 |
| Fort Ogden | 39 | ..... |
| | 13,397 | 13,260 |

Majority for Niblack, 137.

Your committee, therefore, recommend the adoption of the following resolutions:

*Resolved*, That Josiah T. Walls is not entitled to a seat in this House from the State of Florida.

*Resolved*, That Silas L. Niblack is entitled to a seat in this House from the State of Florida.

## J. HALE SYPHER.

March 3, 1873.—Mr. McCrary, from the Committee on Elections, made the following report:

*The Committee on Elections, having had under consideration the following preamble and resolution, to wit:*

FORTY-SECOND CONGRESS, THIRD SESSION.

CONGRESS OF THE UNITED STATES,
IN THE HOUSE OF REPRESENTATIVES,
*February* 22, 1873.

Mr. Kerr submitted the following, which was agreed to:

Whereas it is alleged, in testimony recently taken before the Committee on Privileges and Elections of the Senate, that Mr. J. Hale Sypher, a member of this House from the State of Louisiana, in 1870, at and before the general election in that year in said State for Representatives in Congress, and when said Sypher was a candidate for election as a member of the present House, did unlawfully and corruptly procure to be made false and fraudulent registrations, and did with like intent procure to be cast and counted for himself and others false and fraudulent votes, and did procure gross frauds to be committed in connection with the conduct of said election, in his own interests and in the interest of others; and whereas the honor of this House and duty toward the country require that said charges be fully investigated: Therefore,

*Resolved*, That the Committee on Elections be directed at once to investigate said several charges, and to that end have authority to send for persons and papers, and that said testimony taken before said Senate committee, as printed, be referred to said Committee on Elections, and that said committee be directed to report its conclusions to the House as soon as practicable.

Attest:

EDWARD McPHERSON, *Clerk.*

*submit the following report:*

The said preamble and resolution was adopted by the House on Saturday, the 22d instant, and at a late hour of the session of that day, and was therefore not laid before the committee until Monday, the 24th instant. It will be seen that when the committee, at the earliest moment possible, came to consider as to their duty under the order of the House, but seven days of the present Congress remained within which to take testimony and report to the House. When it is added that all the witnesses (and it is understood that they are numerous) reside in the State of Louisiana, and that the investigation would necessarily involve an inquiry into the character of certain persons for truth and veracity, as well as many and different questions of fact, it will be seen that a proper investigation of the charges referred to and a satisfactory determination of the questions presented thereby during the present Congress is impossible.

Your committee therefore recommend the adoption of the following resolution:

*Resolved*, That the Committee on Elections be discharged from the further consideration of the resolution adopted by the House on the 22d instant in relation to the investigation of charges against Hon. J. Hale Sypher, a member of this House from the State of Louisiana, and that said resolution be laid upon the table.

The House adopted the report March 3, 1873.

FORTY-THIRD CONGRESS FIRST SESSION

COMMITTEE ON ELECTIONS

H. Boardman Smith, of New York, chairman.
Charles K. Thomas, of North Carolina.
Jerry W. Hazelton, of Wisconsin.
Lemuel Dodd, of Pennsylania.
Austin F. Pike, of New Hampshire.
James W. Robinson, of Ohio.
Horace H. Harrison, of Tennessee.
Ira B. Hyde, of Missouri.
R. Milton Spear, of Pennsylvania.
Lucius Q. C. Lamar, of Mississippi.
Edward Crossland, of Kentucky.

H. R. WELLS, *Clerk.*

## WEST VIRGINIA CONTESTED ELECTIONS.—BENJAMIN WILSON vs. JNO. J. DAVIS; BENJAMIN F. MARTIN vs. J. MARSHALL HAGANS.

These cases rested upon the construction of a statute of West Virginia, passed in 1869 providing for the holding of elections in that State, and prescribing the time for electing Representatives to Congress. In 1872 a new constitution and schedule was ratified by popular vote, changing the time for holding general elections for State and county officers.

The governor gave Messrs. Davis and Hagans credentials certifying that they were elected, provided the 4th day of August was the legal day for electing Representatives in Congress; and to Messrs. Wilson and Martin like credentials certifying that they were elected, provided the fourth Thursday of October was the legal day for electing Representatives.

Majority and minority reports submitted.

Minority report adopted January 27, 1874—Yeas, 134; nays, 82; not voting, 70.

Jno. J. Davis and J. Marshall Hagans were sworn in January 27, 1874.

Authorities referred to: West Virginia Code, chap. 3, secs. 1 and 2; New Constitution of West Virginia, art. 4, secs. 3 and 7; art. 8, sec. 36; sec. 66; sec. 4, art. 1; Cass *vs.* Dillon, 2 Ohio R., N. S., 607; Ohio, *ex rel.* Evans, *vs.* Dudley, 1 Ohio S. R., 437; 1st Ohio Rep., Ranney, J.; 2d Ohio Rep., page 611; 5 Ind. R., Porter, 162; Marlot *vs.* Lawrence, 1 Blatchford Ct. Cls., 608; E. Dist. Pa., Crabbe, 350; McCool *vs.* Smith, 1 Black, 459; 8 Cranch, 109; Wood *vs.* United States, 16 Peters, 342; Davis *vs.* Fairbairn, 3 How., 636; Old Constitution of West Virginia, art. 12, sec. 1; Opinions of Attorneys-General, vol. 12, page 429; Potter's Dwarris, 101; See 2d Story C. C. R., 571; Jameson's Work on Constitutional Conventions, page 409; Federal Constitution, art. 1, sec. 4; art. 6; 5 Watts and Sergeant Penna., 283; Brightly's Election Cases, page 24; Dwarris on Statutes and Constitutions, pages 150–4; 10 Barr., 448; 9 Barb., 308; 1 Black U. S. R., 470; Shiel *vs.* Thayer, 37th Congress; Constitution of California, 1849, sec. 8; Constitution of Arkansas, 1868; Constitution of Louisiana, 1868; Constitution of Michigan, 1835; Constitution of Iowa, 1846.

January 14, 1874.—Mr. H. Boardman Smith, from the Committee on Elections, submitted the following report and resolutions:

*The Committee on Elections, to whom were referred the contested-election cases of Davis* vs. *Wilson, from the first Congressional district, and Hagans* vs. *Martin from the second Congressional district, of West Virginia, make the following report:*

The first two sections of chapter 3 of the Code of West Virginia are in these words:

1. The general election of State, district, county, and township officers, and members of the legislature, shall be held on the fourth Thursday of October.

2. At the said elections in every year there shall be elected delegates to the legislature and one senator for every senatorial district. And in the year 1870, and every second year

thereafter, a governor, secretary of state, treasurer, auditor, and attorney-general for the State, a prosecuting attorney, surveyor of lands, recorder, and the number of assessors prescribed by law, and a *Representative in the Congress* of the United States for the term beginning on the 4th day of March next after the election, *for every Congressional district;* and in the year 1870, and every fourth year thereafter, a judge of the supreme court of appeals for the State, and a clerk of the circuit court, and a sheriff for every county; and in the year 1874, and every sixth year thereafter, a judge for every circuit.

Article 4, section 7, of the new constitution of West Virginia, ratified by popular vote on the 22d August, 1872, is in these words:

The general elections of State and county officers and members of the legislature shall be held on the *second Tuesday* of October until otherwise provided by law.

The constitutional convention adopted a schedule, of which sections 3 and 7 are as follows:

SEC. 3. The officers authorized by existing laws to conduct general elections shall cause elections to be held at the several places for voting established by law in each county on the *fourth Thursday of August*, 1872, at which elections the votes of all persons qualified to vote under the existing constitution, and offering to vote, shall be taken upon the question of ratifying or rejecting this constitution AND SCHEDULE.

SEC. 7. On the same day, and under the superintendence of the officers who shall conduct the election for determining the ratification or rejection of the constitution and schedule, elections shall be held at the several places of voting in each county for senators and members of the house of delegates, and all officers, executive, judicial, county, or district, required by this constitution to be elected by the people.

At the said August election the new constitution and schedule were ratified by the people, and a full State ticket was elected.

Elections for Representatives in Congress were likewise held on the fourth Thursday in August. The aggregate Congressional vote was but 44,917, while 81,875 votes were cast upon the ratification of the constitution.

At this election, in the first district—

| | |
|---|---|
| Mr. Davis received | 13,361 votes. |
| Mr. Wilson | 12,948 votes. |
| H. W. Rook | 4 votes. |
| Aggregate | 26,313 votes. |

In the second district, the Congressional conventions of both parties met before the August election and adjourned without making nominations. At the August election, however, Mr. Hagans received 3,441 votes, returned, and, it is claimed, other votes which were not returned. There were 600 votes for other candidates.

Upon the fourth Thursday of October another election for Representatives was held, at which the aggregate vote cast was 22,146. In the first district—

| | |
|---|---|
| Mr. Wilson received | 3,708 votes. |
| Thirty-nine other candidates | 381 votes. |
| Total vote | 4,089 votes. |

In the second district, at the October election, Mr. Martin received nearly 6,000 votes, which was a majority over all other candidates.

The governor of West Virginia gave Messrs. Davis and Hagans credentials certifying that they were elected, provided the fourth Thursday of August was the legal day for electing Representatives in Congress; and to Messrs. Wilson and Martin like credentials certifying that they were elected, provided the fourth Thursday of October was the legal day for electing Representatives.

The legislature of West Virginia subsequently passed an act directing certain State officers to give certificates to the Representatives elected to Congress, who gave formal certificates to Messrs. Wilson and Martin.

Article 8, section 36, of the new constitution provided as follows:

Such parts of the common law and of the laws of this State as are in force when this constitution goes into operation, and are not repugnant thereto, shall be and continue the laws of this State until altered or repealed by the legislature.

The OLD ELECTION LAW of West Virginia, passed November 13, 1863, provided as follows:

*Be it enacted by the legislature of West Virginia*, 1. There shall be elected on the fourth Thursday of October, in the year 1864, and the same day in every year thereafter, delegates for the several delegate districts and counties not included in delegate districts; and one senator for every senatorial district.

And on the fourth Thursday of October, in the year 1864, and THE SAME DAY in every second year thereafter, a governor, secretary of state, treasurer, auditor, and attorney-general for the State, *a Representative in the Congress of the United States* for each Congressional district, for the term commencing on the fourth day of March next after the election, and a prosecuting attorney, surveyor of lands, recorder, county treasurer, and the number of assessors prescribed by law for every county.

And on the fourth Thursday of October, in the year 1866, and the same day in every fourth year thereafter, a judge of the supreme court of appeals for the State, and a clerk of the circuit court and sheriff for every county.

And on the fourth Thursday in the year 1868, and the same day in every sixth year thereafter, a judge for every circuit, &c.

FIRST.

Did the code of West Virginia "prescribe" a day certain for the Congressional election in section 1, or simply an "occasion" for the same in section 2, of chapter 3?

The two sections are in these words:

SEC. 1. The general election for State, district, county, and township officers and members of the legislature shall be held on the fourth Thursday of October.

SEC. 2. At the said elections in every year there shall be elected delegates to the legislature and one senator for every senatorial district, and in the year 1870, and every second year thereafter, a governor, * * * a Representative in the Congress of the United States * * * for *every Congressional district;* and in the year 1870, and every fourth year thereafter, a judge of the supreme court of appeals; * * * * and in the year 1874, and every sixth year thereafter, a judge for every circuit.

1. That interpretation which leads to the more complete effect which *the legislature* had in view is preferable to another. (Lieber, 167.)

2. Does the term "officers," then, as used in the first section, include Representatives in Congress?

Bouvier defines an officer thus: "He who is lawfully invested with an office," and cites members of Congress as "legislative officers."

Webster defines an officer as "one who holds an office."

But the definition of terms found in this same chapter of the code must be deemed conclusive upon this point, even if it were otherwise doubtful.

Chapter 3 is found in the codified laws of West Virginia.

The chapter is headed "The *officers* to be elected and the *time* of their election.

Section 66 of the same chapter characterizes Representatives of Congress *in terms* as "officers."

When an election is held in a county for any of the following OFFICERS, that is to say, for delegate, * * * *Representative in the Congress* of the United States, &c.

Section 61 does the same thing in effect.

3. If, then, Representatives are "officers," and are required to be elected "in each Congressional district" (section 2), they are, as well as

circuit judges, "district officers" within the meaning of section 1. In this section, *confessedly* intended to prescribe *a day certain* for the election of *every other officer* mentioned in the chapter, generic terms are used, distinguishing the different classes of officers by the territorial divisions within which they are chosen.

Section 2 is simply an enumeration of the officers, the day of whose election was prescribed under generic terms in section 1.

The legislature, therefore, had implicitly obeyed the requirement of article 1, section 4, of the Constitution of the United States, and had "prescribed" for the election of Representatives in Congress a day certain in section 1, and not an occasion in section 2.

The fact that Representatives are specially mentioned in section 2 does not affect the question, except to demonstrate that they are included in the term "district officers" in section 1. So is the governor mentioned in section 2, though plainly included in the class of "State officers" mentioned in section 1.

4. Is there any opportunity for "construction" here? If there be, then the *old election law* of West Virginia, passed November 13, 1863, quoted above, and which was codified and somewhat abbreviated in chapter 3 of the code, seems to be important on this question. By the second paragraph of that act it is provided, "And on the fourth Thursday of October, in 1864, and ON THE SAME DAY in every second year thereafter, a governor, * * a Representative in the Congress of the United States," &c., shall be elected.

This act prescribed a *day certain.* Can it be fairly claimed that, as abbreviated in the codification, there was an "intention" to change the "prescribed time" from a day certain to an ambulatory "occasion?"

The attempt at abbreviation consisted in the mention *but once* of the prescribed day, whereas in the act codified it was often repeated, and in grouping each class of *officers to be elected* under a generic term in the first section, which alone prescribes the time.

SECOND.

Was the "prescription" of time for the election of "district officers," either circuit judges or Representatives in Congress, contained in section 1 of chapter 3 of the code, repealed by the new constitution?

Article 4, section 7, of the new constitution provides:

> The general election of State and county officers and members of the legislature shall be held on the *second Tuesday* of October.

This section, it will be observed, is entirely *silent* as to the election of "district officers." It fixes no time for the election of circuit judges, nor for the election of a large number of *new* "district officers" created by the new constitution. If it repeals section 1, as to the election of district officers, then it does it by "implication."

In Cass *vs.* Dillon (2 Ohio R., N. S., 607) it is held: That upon the adoption of a new constitution of the State of Ohio "all laws inconsistent therewith fell, simply because they were inconsistent." In other words, all repugnant laws were repealed "by implication."

The syllabus of the case reads further as follows:

> The rule that repeals by implication are not favored is applicable to the inquiry whether any particular enactment has ceased to be in force on account of repugnancy to the new constitution. (Ohio *ex rel.* Evans, *vs.* Dudley, 1 Ohio S. R., 437, approved.)
>
> The repugnancy which must cause the law to fall must be necessary and obvious. If, by any fair course of reasoning, the law and constitution can be reconciled, the law must stand.

In the case cited from the 1st Ohio Reports, Ranney, J., says:

If such inconsistency is found to exist after a *fair* and *honest* effort to reconcile them, it cannot be doubtful which must give way. No court will, if it consistently can be avoided, determine that a statute is repealed by implication.

In the case cited from the 2d Ohio Reports, on page 611, the court cite another case, in which it is held that one statute will not repeal another by implication, "unless they can be reconciled *by no mode of interpretation.*"

The rule of construction does not permit repeals by implication in *doubtful cases.* (5 Ind. R., Porter, 162.)

Before there is a repeal by implication there must be such repugnancy that the two statutes *cannot stand together* or be consistently reconciled. (Marlot *vs.* Lawrence, 1 Blatchford, Ct. Cls., 608.)

The repeal of a law by implication "should not be deduced by an ingenious course of argument, but *should appear at once.*" (E. Dist. Pa., Crabbe, 350.)

One statute is not to be construed as a repeal of another *if it be possible* to reconcile the two together. (McCool *vs.* Smith, 1 Black, 459.)

A repeal by implication is not to be presumed unless from the repugnance of the provisions the inference be necessary and *unavoidable.* (8 Cranch, 109.)

The same stringent rule applies in cases where the repugnancy exists only *as to parts* of a statute.

The old law is repealed by implication only *pro tanto*, to the extent of the repugnancy. (Wood *vs.* United States, 16 Peters, 342.)

In affirmative statutes, *such parts* of the prior as may be incorporated into the subsequent statute as consistent with it must be considered in force. (Davis *vs.* Fairbairn, 3 How., 636.)

The new constitution did not in terms and within these authorities, did not *by implication*, remove the election of Representatives in Congress and circuit judges from the day fixed by the first section of the code; and until the legislature shall otherwise provide, they must be chosen on the fourth Thursday of October.

*Per contra*, the new constitution abolished township officers, and made justices of the peace (art. 8, sec. 25) and constables (art. 9, sec. 2) also "district officers." These new "district officers," in our judgment, must likewise be elected, under the new constitution, on the day fixed by the first section of chapter 3 of the code, unless some other day be fixed by the legislature for their election.

If the foregoing conclusion be wrong, it must be because, by *implication*, by *construction*, it is demonstrated that the first section of the code, as to the election of district officers and the new constitutional provision as to the election of State and county officers, "cannot stand together" and can be reconciled, "by no mode of interpretation," and because "it *is not possible* to reconcile the two," and the repugnancy is "necessary and obvious," and "appears at once," and is "unavoidable," and is not even "doubtful."

THIRD.

Was the prescription of the fourth Thursday of October for the Congressional election repeated by the schedule of the constitutional convention for the year 1872?

The schedule makes provision (such as it is) for the election, on the fourth Thursday of August, in that year, of such "district" officers as are "*required by this constitution* to be elected by the people." This excludes, because it does not include, Representatives in Congress, who are not "required *by this constitution* to be elected by the people."

But the advocates of the August election maintain that the code nowhere prescribes a day certain for the Congressional election, but that section 2 prescribes an "occasion" therefor, to wit, the general State election; that the general State election for the year 1872, by authority of the schedule of the constitutional convention, was held on the fourth Thursday of August, and, by force of section 2, drew the Congressional election to that day.

Conceding, for the purposes of the argument, that the only prescription of time is in section 2, and is the prescription of an "occasion," nevertheless we cannot hold the August election a valid election, for these reasons:

1. Section 4 of article 1 of the Constitution provides:

> The times, places, and manner of holding elections for * * * Representatives in Congress shall be prescribed in each State by the legislature thereof.

There is no reasonable and just interpretation of the word "prescribed" which does not inexorably demand that the time shall be fixed *in advance*, to the end that the electors shall know beforehand when their Representatives in Congress are to be chosen.

2. The fourth Thursday of August had never been named by the legislature as the day for any election; nor was it *lawfully* "prescribed" by the constitutional convention, for the reason that any change of the day for the Congressional, or, indeed, the State, election by the convention, was *positively prohibited* by the law which brought that convention into being.

Article 12, section 1, of the old constitution of West Virginia, under which the constitutional convention was called, provided that it should only be amended by a convention called, as therein specified, and that—

> All *acts* and *ordinances* of said convention shall be submitted to the voters of the State for ratification or rejection, and *shall have no validity whatever* until they are ratified; and in no event shall they, *by any shift or device*, be made to have any *retrospective operation or effect*.

The schedule itself, therefore, not being valid law until ratified, it cannot, in its relation to the fourth Thursday of August, be regarded as a law which "prescribes."

Hence it follows that this day was not the *lawfully* "prescribed time" for the Congressional election. Nor could it be the "prescribed" day for the State election, except by an ordinance in the very teeth of the constitution. The whole truth seems to be, that the people held an *unauthorized* State election, and *authorized* it after it was held. To grant that this conditional election, by reason of the result, *turned out to be* a valid State election, does not affect the argument. The Constitution of the United States does not prohibit the people of West Virginia from holding a State election which is not lawfully "prescribed," if they see fit to do so.

Waiving any consideration of the power of a *territorial* constitutional convention, embodying the entire political power of such inchoate community, and that of a State convention unrestrained by positive limitations of its power, it seems clear that the convention in West Virginia could not lawfully prescribe a new day for any election.

In the recent decision of the supreme court of Pennsylvania the court say:

> The entire process of raising a convention * * was a matter of law in a state of peace, *under the forms of the constitution*, through which the consent both of the people and of the existing government was given, to prevent the convention from becoming a revolutionary body. * * In considering the question of delegated power some are apt to forget that the people are always under a constitution and an existing frame of government, instituted by themselves, which stand as *barriers* to the exercise of the original powers of the people,

unless in an authorized form they glide insensibly into the domain of abstract rights, and clothe mere agents with primordial power. But delegated authority is *derived*, and those who claim it must know where and how they derived it. Three and a half or four millions of people cannot assemble themselves together in their primary capacity. They can only act through constituted agencies. No one is entitled to represent them unless he can show their warrant; how, where, and when he was constituted their agent. * * * The voice of the people can be heard only in an authorized form; for, as we have seen, without this authority a part cannot speak for the whole; and this brings us back to a *law* as the *only authority* by which the will of the whole people, the body politic, called the State, can be collected under an existing lawful government. To wander outside of this channel is to run in search of original powers which, though possessed by the people, they have conferred in no other form. If the power be *delegated* it must be seen in the derivation, otherwise it does not exist. If, then, the delegates, elected by the people themselves under the act of 1872, have greater powers than are contained in it, *when, where*, and *how* did they obtain them?

The legislature of Massachusetts submitted to the supreme court of that State the following question:

1st. Whether, if the legislature should submit to the people to vote upon the expediency of having a convention of delegates of the people for the purpose of revising or altering the constitution of the commonwealth in any specified parts of the same, and a majority of the people voting thereon should decide in favor thereof, could such convention, holden in pursuance thereof, act upon and propose to the people amendments in other parts of the constitution not so specified?

To which the court replied:

If, however, the people should, by the terms of their vote, decide to call a convention of delegates to consider the expediency of altering the constitution in some particular part thereof, we are of opinion that such delegates would derive their whole authority and commission from such vote. And upon general principles, governing the delegation of power, they would have no right, under such vote, to act upon and propose amendments in other parts of the constitution, not so specified. (6 Cush. Rep., 573.)

In vol. 12, Opinions of Attorneys-General, page 429, it is held:

A cession of jurisdiction over land purchased by the United States, by a constitutional convention of a State, is not a consent to the purchase by the "legislature of the State" within the sense of the constitution and the joint resolution of September 11, 1841.

This question arose under article 1, section 8, clause 17, of the Constitution.

In the most able and exhaustive work of Professor Jameson upon constitutional conventions, after an elaborate discussion of the question, he says, on page 326:

On the contrary, as we have seen, both reason and authority concur in assigning to the convention a particular function *limited by the act under which it convenes*, which is its charter or constitution.

3. But whatever the convention might have done, it did not in fact *attempt* to authorize this election *by its own act*. The very schedule which *advised* the election was submitted to the people for ratification. The election was experimental, *de bene esse*, neither prescribed by the legislature nor ordained by the convention. It submitted to the people to say whether they would have an election on that day or not. Whether this election was "prescribed" (if it could be done in this way), no man could tell until after the votes were counted.

4. Again: A general State election can only be "prescribed" by LAW. Does it stand to reason that section 2, chapter 3, of the code meant to fix any other kind of a State election as the "occasion" of the Congressional election? But this convention could not enact a "law," and if it could, and had full legislative power, a *law* (though it may be made to take effect on the happening of a future contingency) must be a valid law, *in presenti*, when it leaves the hands of the legislature, and cannot become a "law" by the approval of a popular vote. 4 Seld. (N. Y.), 483, &c. Rice *vs.* Foster, Brightly's Election Cases, 3.

5. In answer to these difficulties, it is suggested that by night of election day the old constitution was superseded, and that the new constitution was thereupon "operative and in full force from and including the fourth Thursday of August, 1872," and that "fractions of days are not noticed by the makers either of statutory or organic laws."

But the answer suggested admits, that down *to the morning* of the fourth Thursday of August, any law or ordinance prescribing the holding of a Congressional or State election on that day was unconstitutional and void. Nor (if this be material) is it unqualifiedly true that "fractions of a day are not noticed."

Common sense and common justice equally sustain the propriety of allowing fractions of a day, whenever it will promote the purposes of substantial justice. (Potter's Dwarris, 101; see 2 Story, C. C. R., 571.)

It is also suggested that the admission of Senators and Representatives simultaneously with the admission of new States, who have been elected at the same time with the ratifications of the first State constitutions, is sufficient authority for sustaining the validity of the August election. But these cases have always been put upon the ground of "necessity," and upon the theory, whether it be a "legal fiction" or whatever else, that a State is not fully in the Union until it is in its normal and constitutional relations with the Union and represented in Congress. Of course between such cases, whether right or wrong, and the case of West Virginia no analogy can be drawn. The constitutional provision had been in full sway in West Virginia for some ten years. What suspended it?

At page 409 of Jameson's work on constitutional conventions, the author says of these precedents:

There being as yet no State, and of course no State legislature, unless the convention could make a temporary arrangement for the election of members of Congress, the new State must, after its admission into the Union, be unrepresented in that body until a State legislature could be elected and could pass the necessary laws, a condition involving often a considerable delay. In such cases, accordingly, the custom has been for the convention to anticipate the action of the legislature, a course which, on account of its obvious convenience, has been commonly acquiesced in. These cases, however, form exceptions to a rule which is general—that it is the State legislatures which apportion their several States for Congressional elections. I have failed to find a single exception to that rule, save in the cases of Territories seeking to become States, or of States standing substantially upon the same footing as Territories.

Besides, in one view of the subject such action of the Territories, taken in connection with that of Congress following it, involves no impropriety, if it is not strictly regular. Immediately following that clause of the Federal Constitution giving the power of determining the "times, places, and manner of electing Senators and Representatives" to the State legislature, is the important reservation, "but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators." Hence, having the power to make or alter, Congress doubless might ratify such regulations, however made; or if a State, actual or inchoate, were in such a condition that it had no lawful legislature, Congress might itself, for the sake of convenience, establish them by its direct action. This it does, in substance, by anticipation in those cases in which it accepts and admits into the Union Territories presenting themselves with constitutions containing the apportionments referred to.

6. But apart from a critical interpretation of the word "prescribed" in the constitution, and giving the constitutional provision the same meaning it would have had if the words used had been "provided for" or "determined," the same result follows.

To establish the fourth Thursday of August as the legal day the advocates of the August election, inasmuch as this day had never been named by the legislature, invoke the aid of the maxim, "*Id certum est quod reddi certum potest.*" Without the aid of this maxim the whole case of the August claimants falls to the ground. But must not the day within any possible meaning of this maxim be rendered certain in

*advance?* Is it certain, if made to depend upon a contingency (*e. g.*, the ratification of the constitution) which no man can know till *after the event?*

The constitutional requirement as to prescribing place is identical with that as to time. There must, of course, be the same degree of *certainty* in prescribing the one as the other. Now, suppose the "place" for the election of Representatives had been fixed "at those polls in each county, where a majority of votes cast shall be in favor of the ratification of the constitution." The "places" for choosing Representatives would have been prescribed on the fourth Thursday of August, if the "time" was prescribed. The uncertainty might have been greater, but it would have been identical *in kind* with the uncertainty which did in reality exist as to time. If a "prescription" of time be valid with one condition annexed, would it also be with two?

7. But even if it be conceded that the schedule did sustain to the election, on the fourth Thursday of August, the relation of a law "prescribed," we do not think that it authorized or undertook to authorize the election of Representatives in Congress on that day.

It is held by those who favor the admission of Messrs. Davis and Hagans, that the schedule orders a "general election," and thus, by the force of the statute draws the election of Congressmen to this day. We cannot give our assent to this proposition. In the first place, the schedule itself studiously avoids providing for a "general election" in terms.

It provides for the "election" of State officers, and directs that said "election" shall be held "by officers authorized by existing laws to hold *general* elections."

The schedule itself, therefore, recognizes the distinction between the August election and the "general elections," authorized by existing laws.

But apart from the language of the schedule, the August election, in our opinion, was not the general election mentioned in section 2 of the code.

It has been urged by those who maintain the opposite view, that the August election was a general election because it provided for the election of the State officers, and because of its being generally held throughout the State.

It is undeniable that these two features of the August election are indispensable characteristics of a "general election."

But they alone and of themselves do not constitute an election of this character.

A "general election" is one opposed in its nature to a special election.

Now, the election of August, while it was general in the two respects above adverted to, was *special* in its object, which was simply to put the new machinery into motion; special in time, and special in its contemplation of a contingency that may defeat its validity.

To be *general* an election must be one of a *class, series*, or order, regularly recurring in the current life of the State. Such a term cannot be applied to one election, which is isolated and disconnected with any other, never recurring, abnormal, and exceptional in its character and defeasible in validity.

Even, therefore, if it were established that the convention was constitutionally competent to order through its schedule a general election of State officers—and this draws the congressional election to that day—we think that the convention has not exercised that power, nor attempted to do so.

The committee recommend the adoption of the accompanying resolutions.

H. B. SMITH.
C. R. THOMAS.
EDWARD CROSSLAND.
R. M. SPEER.
L. Q. C. LAMAR.

I concur in the report and resolutions submitted by the majority of the committee, based on the facts before it; but am of the opinion that the cases have not been fully developed, and that the committee should have inquired into the facts attending the October election, which, from the paucity of votes polled, the irregularities surrounding it, and the doubt and uncertainty prevailing in the minds of the people in regard to its legality, show, in my judgment, that it was not such an election as indicates on the part of the people a fair and legal choice of Representatives, and that the cases should be recommitted, with power to send for persons and papers.

LEMUEL TODD.

JANUARY 14, 1874.

We concur in the report of a majority of the committee in holding that the election for members of Congress in August was not a valid election, but dissent from the views and conclusions of a majority of the committee as to the October election. We are satisfied that neither election was valid.

HORACE H. HARRISON.
IRA B. HYDE.

The committee recommend the adoption of the following resolutions:

1st. *Resolved*, That Mr. Davis, claiming to have been elected a Representative in the Forty-third Congress from the first Congressional district of West Virginia, was not duly elected, and is not entitled to a seat in this House.

2d. *Resolved*, That Mr. Hagans, claiming to have been elected a Representative in the Forty-third Congress from the second Congressional district of West Virginia, was not duly elected, and is not entitled to a seat in this House.

3d. *Resolved*, That Mr. Wilson, claiming to have been elected a Representative in the Forty-third Congress from the first Congressional district of West Virginia, was elected upon the day lawfully prescribed for the election of Representatives in Congress, in the State of West Virginia, and is hereby admitted to a seat in this House.

4th. *Resolved*, That Mr. Martin, claiming to have been elected a Representative in the Forty-third Congress from the second Congressional district of West Virginia, was elected upon the day lawfully prescribed for the election of Representatives in Congress in the State of West Virginia, and is hereby admitted to a seat in this House.

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MINORITY REPORT.

Mr. Speer submitted the following views of a minority:

There is no dispute about any material facts in this contest. The questions involved are questions of law, and they seem to arise, in their exact present form, for the first time in this case.

In 1872, in the first and in the second district of West Virginia, candidates for Congress were voted for at two elections, held on different days, to wit, on the fourth Thursday of August and on the fourth Thursday of October, and held under distinct and separate authority; the August election, under the authority as claimed of the constitutional convention, and the October election under the authority of the legislature. At the August election, John J. Davis was chosen for the first district, and J. M. Hagans for the second. At the October election, Benjamin Wilson was chosen for the first and B. F. Martin for the second district. There is no allegation of fraud, intimidation, or irregularity in the manner of conducting either election. There were more votes cast in the first district in August than in October, while in the second, there were more cast in October than in August.

Concurring in the conclusions of the report submitted by the chairman of the committee, the undersigned submit the following reasons for the conclusions of the said report, that the election on the fourth Thursday of October, 1872, was legal and valid.

The Federal Constitution, article 1, section 4, provides that—

> The *times*, places, and manner of holding elections for Senators and Representatives *shall* be prescribed by the *legislature* thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Having thus expressly committed to the legislature of each State the power to prescribe the time of holding Congressional elections, subject only in its exercise to the higher power of Congress, the Constitution, seemingly in anxious care that the obligation and duty involved in the grant of power should be faithfully discharged, requires, in article 6, that—

> The Senators and Representatives before mentioned, *and the members of the several State legislatures* * * * * *shall be bound by oath or affirmation* to support this Constitution.

With these provisions of the Federal Constitution, thus plainly declaring and solemnly enjoining its duty, in full view, the legislature of West Virginia, in 1869, in chapter 3, sections 1 and 2 of the code, enacted as follows:

> 1st SECTION. The general elections for State, district, county, and township officers, and members of the legislature, shall be held on the fourth Thursday of October.
>
> 2d SECTION. At the said elections in every year there shall be elected delegates to the legislature and one senator for every senatorial district; and in the year 1870, and every second year thereafter, a governor, secretary of State, treasurer, auditor, and attorney-general of the State; a prosecuting attorney, surveyor of lands, recorder, and the number of assessors prescribed by law, and a Representative in the Congress of the United States for the term beginning on the fourth day of March next after the election for every Congressional district.

The proper construction of these sections of the code becomes of the gravest importance in correctly and justly determining the questions involved in this contest. West Virginia was a State in full life, with all the departments of her local government in active and harmonious operation. It was the duty—*the sworn duty*—of her legislature to prescribe the *time* of electing her Representatives in Congress. Recognizing this duty, the legislature, as we believe, *did* definitely prescribe the time, and if it did, there was no power in the State, or out of it, competent to change the time, except Congress and the legislature itself. It is claimed by those who hold the August election to be valid, that the legislature prescribed only the "occasion" and not the time. But this assumes that the legislature did not only *not* do its duty, but that it did not *intend* to do it. For, whence does it derive the power to prescribe the *occasion* for holding Congressional elections—to prescribe an

event, the happening of which may be placed utterly beyond its control or authority? It not only has the power, but it is under the most positive obligation, to prescribe the *time*. But naming an event on the occurrence of which the election shall be held, and leaving the time of the event to be fixed or changed by another body, which has no power to fix the time of the election itself, it seems to us can, in no just sense, be regarded as a compliance with the mandate of the Federal Constitution. And hence, no intention on the part of the legislature so to evade its duty is to be *inferred*, and no such construction should be placed upon its *act*, unless the language absolutely demands it. If the legislature can discharge its duty by naming an occasion, which occasion may be fixed by some other power in the State, then that other power may, under the same reasoning, entirely *abolish the occasion*. If it is competent to postpone it for a day, it is equally competent to postpone it for a year, or for all time! Under this view, the legislature would legally prescribe the occasion, which occasion could legally never happen.

Premises which lead to such a conclusion cannot be sound; and any construction of the statute of a State legislature which logically leads to such a result, should be adopted with extreme hesitation, and only from absolute necessity. But what is there in that part of the code of West Virginia, above quoted, which requires, or even permits, any such construction? The first section prescribes the fourth Thursday of October as the *time* when the general elections *shall* be held. It uses the words "general elections" to designate the usual, ordinary, periodical election which was annually to occur. But the special purpose of *this* section is to prescribe the *time*, and not to enumerate the officers to be elected. The second section specifically prescribes *what* officers shall be chosen. Its purpose is not, in any manner, to affect the *time* fixed in the first section, but simply to declare and define what shall be done *upon the day prescribed*. But, in naming the officers to be elected, it necessarily refers their election to some day, and that day can only be the day fixed in the first section. *When* are the officers named in the second section to be elected? "At the said elections" fixed in the first section, to wit, on the fourth Thursday of October. What do the words "at the said elections," in the second section, mean? Do they, or can they be made to mean, by any fair and authorized interpretation, elections held at a time not prescribed by the legislature? At a time prescribed by some other body, in opposition to the time prescribed by the legislature? If they do, then they mean at elections which may never legally be held at all; for the question here is, not as to another day prescribed by the legislature, but as to another day prescribed by the constitutional convention of West Virginia, which, as against an existing day fixed by the legislature, clearly had no authority at all to name a day for Congressional elections.

It was the sworn constitutional *duty* of the legislature of West Virginia to prescribe the *time*, and it discharged this duty by enacting that the election should be held on the fourth Thursday of October. It derived its power to do this, not from the constitution of the State, but from the Constitution of the United States. And thus deriving the power which it had properly exercised, it was beyond the reach of the State convention, a body not even sworn to support the Federal Constitution, to limit, modify, or control in any way the exercise of this power, even if it had attempted it, which, as we shall see, it did not.

If the second section of the code had read "at the said elections in every year," *namely, on the fourth Thursday of October*, "there shall be elected," &c., there could not be a doubt that the construction we give

the statute is correct. And we submit that the insertion of the said words is implied by the spirit and meaning of the text. The eighth section of the schedule accompanying the constitution of California contained these words: "At the general election aforesaid, *namely, the 13th day of November next*, there shall be elected a governor," &c. And many other instances of the same phraseology might be given in the statutes of the several States. What is the office of the words "namely," &c.? They do not alter the effect or enlarge the scope and meaning of the preceding language. They simply and only *express* what it *implies*. The legal interpretation is and must be the same in either case.

The code of West Virginia may then be fairly read thus:

SEC. 1. The general elections shall be held on the fourth Thursday of October.

SEC. 2. At the said general elections, namely, on the fourth Thursday of October, there shall be elected, every second year, a Representative in the Congress of the United States, for the term beginning on the 4th day of March next after the election, for every Congressional district.

And this construction of the code is fortified by the language of the "Act to regulate elections by the people," passed November 13, 1863, which, in section 1, reads as follows:

And on the fourth Thursday of October, 1864, and the same day in every second year thereafter, a governor, secretary of the State, treasurer, auditor, and attorney-general for the State; *a Representative in the Congress of the United States for each Congressional district, for the term commencing on the 4th day of March next after the election;* and a prosecuting attorney, surveyor of lands, recorder, county treasurer, and the number of assessors prescribed by law for every county.

Here was a *specific day prescribed* by law for the Congressional election, and the code was not in its purpose or spirit *new* legislation, but simply a codification of existing laws.

And it will be clearly seen that all that relates to the election of *State* officers in the second section of the code can be omitted without affecting the provision for the election of members of Congress. Thus it is seen that the legislature, complying with the constitutional requirement, *prescribed the time* for holding the Congressional election; for any provision by it which omitted this essential requisite would not have been a performance, but a plain evasion of its bounden duty. If it still be said that the time was prescribed by reference to an occasion, the answer is, first, that the *happening of the occasion* was prescribed by the legislature; and, secondly, that no power but the legislature itself could separate the occasion from the time. The legislature alone, under the Constitution of the United States, was competent to prescribe the time, and, therefore, it alone was competent to prescribe the occasion. If it could delegate to another body the power to fix the occasion, it could delegate the power to fix the time. But the provision of the Federal Constitution is, not that the legislature *may authorize* the time to be prescribed, but that the time *shall* be prescribed *by it*. Chief Justice Gibson, of Pennsylvania, in 5 Watts & Sergeant, 283, says that "under a well-balanced constitution the legislature can no more delegate its proper function than can the judiciary." (See Brightly's Leading Cases on Elections, page 24, for other authorities.) And if the power to prescribe the time of Congressional elections, thus given to the legislature, cannot be delegated by it, surely, in the absence of even an attempt to delegate it, either express or implied, a constitutional convention cannot exercise it.

The legislature of West Virginia either did or did not prescribe the time of holding Congressional elections. If it did, the day was the fourth Thursday of October. If it did not, but prescribed only the occasion, then it fixed the happening of the occasion on the fourth

Thursday of October, and no power that could not change the time could change the occasion; otherwise, what could not be done directly would be done indirectly.

If, then, the legislature of West Virginia did prescribe the fourth Thursday of October as the time of electing her Representatives in Congress, two inquiries remain: First, has that time been changed? And, secondly, if it has, has the change been made by competent authority?

It is not claimed by any one that the *legislature* has changed it, or attempted to do so; nor that Congress, as to the election of 1872, had made any regulation whatever. If, then, any change has been made, it must result, directly or indirectly, from the action of the constitutional convention of West Virginia.

Assuming, at this point, that this body had the power to change the time prescribed by the legislature for the Congressional election, *has it exercised it?* Certainly not in express terms, for it is utterly and significantly silent upon the subject.

Section 3 of the schedule provides that—

> The officers authorized by existing laws to conduct general elections shall cause elections to be held at the several places of voting established by law in each county on the fourth Thursday of August, 1872, at which election the votes of all persons qualified to vote under the existing constitution, and offering to vote, shall be taken on the question of ratifying or rejecting this constitution and schedule.

This was the authority, and the only authority, for holding the August election.

Section 6 of the schedule provides, in event of ratification, that "this constitution and schedule shall be operative and in full force from and including the fourth Thursday of August, 1872," and it was ratified.

Having thus named a day for the submission of the constitution to a vote of the people, and having also fixed the time from which it should be operative, if ratified, the schedule, section 7, declares:

> On the same day, and under the superintendency of the officers who shall conduct the election for determining the ratification or rejection of the constitution and schedule, elections shall be held at the several places of voting in each county for senators and members of the house of delegates, and all officers, executive, judicial, county, or district, *required by the constitution to be elected by the people.*

Here is a plain, clear designation by name or class, of *all* the officers to be voted for at the August election. Members of Congress are not named, and as they are not State officers, and are not "required by this constitution to be elected," they are excluded from the provisions of the section upon the familiar maxim, "*expressio unius, exclusio alterius.*" The convention, apparently conscious of its want of power, was careful in the use of its language.

Under what authority, then, could an election for Representatives in Congress be held on the fourth Thursday of August, 1872? The code prescribed the fourth Thursday of October, and the constitution and schedule were intentionally silent upon the subject. No change in the time of holding the Congressional election in West Virginia has been *directly* made or attempted by any power, competent or incompetent, authorized or unauthorized. If made at all, it has been made indirectly by a body that had no power to make it directly, or, if it had, clearly did not attempt to exercise it. If the code, as claimed by those who hold the August election valid, prescribed only the occasion, and that the general election, yet the new constitution did not provide that the general elections should be held in August, but "*on the second Tuesday of October*, until otherwise provided by law." The election held in August, 1872, was for the special purpose of voting for or against the constitution; *specially* for this purpose, because a candidate for any of the offices

voted for might have received every vote cast, and yet he would not have been elected, or, what is practically the same, would not have been entitled to hold the office if the constitution had been defeated, for there would have been no office to hold. It is not easy to understand how *the* "general elections" provided for by the code can be construed to mean a single election, held for an extraordinary purpose, on a day not prescribed by the legislature, and never to be held again on that day or for that purpose, and which, in a certain contingency, is not to elect anybody! The code provides that "at the *said elections*" certain officers *shall* be elected; and yet it is urged that the schedule supplants these "said elections" with an election at which *nobody* can, in one event, be elected! It seems to us too clear for argument that no legal election for Congressmen could be held in August, either under the code or the constitution. There was no provision in the schedule for such an election, and there was clearly none in the constitution, for upon its ratification it became *operative for every hour of the day on which the August election is held*, and, by the express language of section 7, article 4, transferred the "general elections" to the second Tuesday of October. Hence, from the earliest hour of that day it was the organic law of the State that the "general elections" *must* be held in October, until otherwise provided; and yet it is claimed that *the* general elections prescribed in the code were held in August, by virtue and force of this same constitution.

Neither Congress nor the legislature having changed the time of holding the Congressional election, and the convention not having done so directly, if changed at all, how was it done?

It is argued that the constitution changed the day of holding the general elections from the fourth Tuesday to the second Tuesday of October, thus repealing the provision of the code providing for Congressional elections on that day; and that, *therefore*, the election of Wilson and Martin on the fourth Thursday of October, 1872, was without authority of law; and that, in fact, there was no legal election of members of Congress in 1872 in West Virginia. There had been a legal election in 1870, under the same code, and as the constitution says nothing about the election of members of Congress, let us examine the ground, as we understand it, upon which the invalidity of the October election is based. The argument seems to be that the general election and the election of Congressmen being provided for by the same act, the change in the day of holding the general election, if made by competent authority, *ex necessitate rei*, carries with it the election of Congressmen; that the statute cannot stand as to part and fall as to part. There might be force in this position, if the repealing power had jurisdiction over the whole subject-matter of the statute; but if it has not, no inference or presumption can arise that it has done by *implication* what it has not done *directly*. The thirty-sixth section of article 8 of the constitution of West Virginia provides that—

> Such parts of the common law, *and of the laws of this State*, as are in force when this constitution goes into operation, *and are not repugnant thereto*, shall be and continue the law of the State until altered or repealed by the legislature.

It was, beyond all question, the law of the State that members of Congress should be elected at "*the* said elections" prescribed in the first section of the code; and that the day for holding them was the fourth Thursday of October. It is equally clear that the convention, whether competent or not, did change the time for holding the general elections; but in doing so it specifically named what officers and classes of officers should be elected thereat, *thus clearly manifesting its intention not to carry to the new day all the provisions of the code, but only such of*

*them as it designated.* If it intended to *embrace* all, why not *name* all? If it be possible that it intended to include members of Congress, why not only fail to name them, but actually *exclude* them, by limiting the class to those "*required by this constitution to be elected?*"

There was nothing "*repugnant*" to the new constitution in the law prescribing the time for the election of Congressmen. It was necessary and vital to secure the rights and maintain the dignity of the State, and being unsupplied, it remained, by the express letter of the constitution, "the law of the State, until altered or repealed by the legislature."

The repeal of statutes *by implication* is not favored. Mr. Justice Story, in Wood *vs.* The United States (16 Peters, 363), uses this language, in delivering the opinion of the court:

The question then arises whether the sixty-sixth of the act of 1799, ch. 128, has been repealed, or whether it remains in full force. That it has not been expressly or by direct terms repealed, is admitted; and the question resolves itself into the more narrow inquiry, whether it has been repealed by necessary implication. We say by *necessary* implication; for it is not sufficient to establish that subsequent laws cover some or even all of the cases provided for by it; for they may be merely affirmative, or cumulative, or auxiliary. But there must be a *positive repugnance* between the provisions of the new laws and those of the old; *and even then the old law is repealed by implication only pro tanto, to the extent of the repugnancy.*—(See also Dwarris on Statutes and Constitutions, pp. 150-154, and 10 Barr, 448.)

In 9 Barb., 308, it is held that "where a late statute is absolutely repugnant to a former one only in part, it repeals the former only so far as the repugnancy extends, and *leaves all the remainder in force.*"

In 1 Black, U. S. R., 470, it is said: "A repeal by implication is not favored; the leaning of the courts is against the doctrine, *if it be possible* to reconcile the two acts of the legislature together."

In the case under discussion there *is* no repugnancy, and, therefore, no necessity for invoking the unfavored doctrine of a repeal by implication. The convention did not touch the subject of Congressional elections, but left it just where the legislature had placed it. The constitution repealed so much of the code as provided for the general election of State officers on the fourth Thursday of October, and this was within the sphere of its powers; but there was nothing in this action to justify the inference, or to permit it, that the convention intended to do something which it did not express, and which it could not have legally done if it had expressed it.

But if it is possible to claim that the convention did change the day for holding Congressional elections in West Virginia from the fourth Thursday of October to the fourth Thursday of August, in 1872, then it is respectfully submitted that its act was unauthorized and void. Where the legislature has *prescribed no time*, a different question may arise. But in this case the legislature *had* prescribed a time; *had* obeyed the requirement of the Federal Constitution; *had* discharged its sworn duty, and *had* exercised its undoubted power. What shadow of authority, therefore, was there in the convention to interfere? The State constitution had not given to the legislature the power to say when Congressmen shall be elected (for it did not have it to give), and neither State constitution nor State convention could take it away. The legislature derived it from *the supreme law of the land*, the Constitution of United States, and in its exercise it knew but one master.

In the Massachusetts convention of 1820, a resolution was submitted declaring that the State constitution ought to be so amended as to provide for the election of members of Congress in such districts "as the *legislature shall direct*," thus limiting its discretion to prescribe "the times, places, and *manner*" of their election. In the discussion that fol-

lowed, Justice Story opposed the resolution, declaring that it "assumes a control over the legislature which the Constitution of the United States does not justify. It is bound to exercise its authority according to its own views of public policy and principle; and yet this proposition compels it to surrender all discretion. In my humble judgment, and I speak with great deference for the convention, *it is a direct and palpable infringement of the constitutional provisions to which I have referred.*"

Mr. Webster followed, limiting himself, however, to the *expediency* of the proposition. He declared that "whatsoever was enjoined on the legislature by the Constitution of the United States, *the legislature was bound to perform;* and he thought it would not be well by a provision of *this* constitution to regulate the *mode* in which the legislature should exercise a power conferred on it by *another* constitution." And the proposition failed.

In the case of Baldwin *vs.* Trowbridge, in the Thirty-ninth Congress, this House held that "where there is a conflict of authority between the constitution and the legislature of a State in regard to fixing the *place* of elections, the power of the legislature is paramount."

This case goes further than is required in the cases now pending.

An apparently contrary doctrine was sustained in the case of Shiel *vs.* Thayer, from Oregon, in the Thirty-seventh Congress. The committee there say they "have no doubt that the constitution of the State has fixed, beyond the control of the legislature, the time for holding an election for Representative in Congress."

But this part of the report was a mere dictum, for there was nothing in the case to require the committee to determine any such question. Shiel had been elected on the day fixed by the constitution, while Thayer claimed to have been elected on the day of the Presidential election—a day not prescribed *by any authority* for the election of a member of Congress. No question as to the power of the legislature to fix the time arose in the case; and what was said upon this point was wholly unnecessary, in view of the undisputed facts.

Upon the merits of this contest a few words may not be out of place. In the first district a much larger vote was polled in August than in October; but the exciting struggle over the new constitution may largely account for this. In the second district conventions of both parties were held before the August election, and, believing that the legal day for the election of members of Congress was the fourth Tuesday of October, they adjourned without making nominations. Mr. Hagans, the claimant for a seat from that district under the August election, was a member of one of those conventions. The vote received by him was much smaller than that cast for Mr. Martin in October. But both elections having been fairly conducted, the number of votes cast at the one or the other cannot be a controlling consideration in the proper determination of the rights of the respective claimants.

Upon the whole case, we conclude that the election held in the first and in the second Congressional district of West Virginia on the fourth Thursday of October, 1872, was legal and valid, and that at such election Benjamin Wilson was duly elected for the first district, and B. F. Martin was duly elected for the second district, as Representatives to the Forty-third Congress from the State of West Virginia. We therefore concur in the resolutions submitted by the chairman in his report.

R. M. SPEER.
L. Q. C. LAMAR.
EDWARD CROSSLAND.

Mr. G. W. Hazleton submitted the following views of a minority:

The undersigned members of the Committee on Elections, while concurring in the conclusion of certain members of the committee as to the invalidity of the so-called October election, find ourselves unable to concur in the opinion that the so-called August election was also invalid, and beg leave to submit to the House such views as seem to us to have a bearing on the subject.

There are two cases we may premise, which were discussed together, and treated by the distinguished counsel who appeared before the committee as standing upon the same grounds, and we assume that the views and considerations which control the action of the House in one case will also be applied to the other.

The case seems to us to turn largely, if not entirely, on the construction of a statute which we quote—the statute of West Virginia, passed in 1869, for the purpose of providing the necessary legislation touching the holding of elections in that State.

The first two sections of that statute are as follows:

1st SECTION. The general elections for State, district. county, and township officers, and members of the legislature, shall be held on the fourth Thursday of October.

2d SECTION. At the said elections in every year there shall be elected delegates to the legislature, and one senator for every senatorial district. And in the year 1870, and every second year thereafter, a governor, secretary of the State, treasurer, auditor, and attorney-general of the State; a prosecuting attorney, surveyor of lands, recorder, and the number of assessors prescribed by law, and a Representative in the Congress of the United States, for the term beginning on the fourth day of March next after the election, for every Congressional district.

The first section is but a substantial re-enactment of a section of the original constitution of the State, but this fact is not material to the discussion.

A constitutional convention, duly called, and sitting at the capital of the State, in the winter of 1872, prepared a new constitution, and submitted the same, with a schedule, to the people of the State on the fourth Thursday of August, for adoption or rejection, and also provided for an election of the officers contemplated by the new constitution on the same day.

The provision of the schedule is as follows:

On the same day, and under the superintendence of the officers who shall conduct the election for determining the ratification or rejection of the constitution and schedule, elections shall be held at the several places of voting in each county, for senators and members of the house of delegates, and all officers, executive, judicial, county, or district, required by this constitution to be elected by the people.

Under this authority the constitution was adopted; a governor, members of the legislature, judges of the courts, and all the officers down to constables were elected, qualified, and entered upon their several offices.

At this election Davis, in the first district, Hagan, in the second, and Hereford, in the third, were elected to the Forty-third Congress.

Another election was held on the fourth Thursday of October, the day designated in the old constitution for the general election, at which Wilson was elected in the first district, Martin, in the second, and Hereford, elected or re-elected in the third.

The question is, which of these, if either, was the valid and legal election; was it the election held in October?

By turning back to the sections of the code of 1869, before quoted, it will be seen that the general elections for State, district, county, and township officers and members of the legislature, was to be held on the fourth Thursday of October.

The second section says:

*At* the said election, * * * in the year 1870, and every second year thereafter, a governor, secretary of state, &c., "*and* a Representative in the Congress of the United States" shall be elected.

At the said election; at what said election? Clearly that election mentioned in the first section, to wit, the general election for State, district, county, and township officers.

The word which is employed to introduce the said second section, as well as the general meaning and obvious intent of the section render this very manifest.

*At* the said election for State and local officers, Representatives shall be elected." "At," in its ordinary and usual application, as applied to time, means contemporary with, in conjunction with.

Now, how can it be claimed that Representatives in Congress can be elected *at* the general election for State and local officers on the fourth Thursday of October, when there is no general election for State and local officers on that day? Observe the language: The section does not read "on said fourth Thursday of October" Representatives in the Congress of the United States shall be elected, but *at the general election for certain officers* therein named, on the fourth Thursday of October, Representatives shall be elected. The whole significance of the section is destroyed by the construction sought to be put upon it, for the purpose of sustaining the October election.

Take an illustration:

Suppose the first section of an act of the legislature of West Virginia to provide as follows:

SEC. 1. The annual meeting of the legislature for the State of West Virginia shall be on the fourth Thursday of October.

SEC. 2. At the said meeting the governor shall deliver his annual message, &c.

Suppose, now, a subsequent legislature strikes out "the fourth Thursday of October," in the first section, and inserts in lieu thereof "the fourth Thursday of November."

The governor, under the logic of the "October election," would deliver his annual message "*at the* said meeting, a month before the meeting should take place."

Again, we fail to understand what authority there was for holding an election for Representatives in Congress only, on the fourth Thursday of October. The law of the State, the code of 1869, regulating the manner of holding the elections, prescribing the officers who should conduct the same, directing as to the making returns, &c., had reference to the State election; the election of the officers of the State government, as distinguished from the Federal Government. The election of Representatives in Congress was hinged on to the State election. It was a mere incident of the State election. They were to be elected at the general election for State and local officers.

Where is the authority for setting in motion the machinery provided for the *State* government to elect Representatives in Congress alone? Who is to give the requisite notice; who to act as inspectors; who to furnish places for conducting the election; who to make the returns and declare the result? The code of West Virginia does not require one of the officers named in the election act to take a step or lift a finger at any election of Representatives in Congress, apart and distinct from the State election. Their duty relates exclusively to the State election, and the election of Representatives in *connection with* such election.

This being so, the State had clearly failed to prescribe any "manner" of electing Representatives in October, as required by the Constitution of the United States, and so no election of such Representatives could take place at that time.

These considerations seem to us conclusive as to the utter invalidity of the October election, without adverting to the obvious intent of the legislature in keeping together the election of Representatives in Congress and officers of the State government, as manifest in the language of the second section of the code. We therefore dismiss the October election as clearly invalid.

And this brings us to the other question.

We ask the reader to turn back again to the sections of the code of 1869, and the provision of the schedule above transcribed.

The convention of 1872 having the clear and undisputed power to change the time of holding the State election for that year as for 1874 and subsequent years, did, as we have seen, change the election for all the officers required by the new constitution to be elected by the people for 1872, from the fourth Thursday of October to the fourth Thursday of August, subject, of course, to ratification by the people.

In legal effect, the convention struck out of said section one of the code the words "the fourth Thursday of October," and inserted "the fourth Thursday of August."

The first section being thus by competent authority changed as stated, the second section, it will be seen, follows and applies without the change of a word or a letter to the first section so amended.

Thus it will be observed that there is nothing in the language of the second section which refers it necessarily to the election for State and other officers, to be held on the fourth Thursday of October.

This is but another method of saying that the legislature of 1869, when it framed the election law and provided all the machinery for conducting an election, and enacted that Representatives in Congress should be elected *at said elections*, intended to point out and designate the *occasion* for electing such Representatives; intended that the one election should be held in conjunction with the other; in other words, that when it provided the means or agencies for holding the State election, and authorized Representatives to be elected *at the time* of said election, and under and by virtue of the machinery *for* said election, it did not intend that Representatives in Congress should *not* be elected at said election and *without* any legal "manner" whatever provided therefor.

Connecting the election of Representatives with an occasion, was, moreover, entirely in harmony with the practice of the old State of Virginia, which for some forty years it seems was authorized to elect Representatives in Congress under a statute which fixed the election at the holding or opening of certain terms of court, which latter were constantly changing with successive acts of the legislature.

It being, we think, clearly the purpose of the legislature that Representatives in Congress should be elected at the general election, it follows that when the occasion was changed, transplanted, the election of Representatives in Congress went with it.

But, in reply, we are told just here, that the election in August was not the general election. It is true it was not expressly called in the schedule a general election. But it is equally true that it was provided to take the place in every particular of the election mentioned in the code as "the general election," and it is also true that it could not have been more general if it had been so declared by the said schedule. It matters little what it was called. What was it in fact?

It is true it was not held at the same time as had previously been designated for the general election, but uniformity of time is not of the essence of a general election. It may be one year in October and the next in November, and yet be the general election. In the State of Iowa, for instance, the general election every fourth year is held in a different month from that in which it occurs in the intermediate years.

The legislature in a State where there is no constitutional inhibition, may change the time of the election every year or every other year, but it is no less the general election.

It is true it was not "to count" in case the constitution should fail to be ratified. It is equally true that an acknowledged general election does not count in case of a tie. If a mere uncertainty as to results varies the case in one instance it does in another.

It is *not* true that it was an election simply to ratify or reject the constitution. It was equally an election—made so by the same section of the schedule—to officer the State. Every officer required to be elected by the people, from governor down to constable, was to be elected on that day. The people were required to do exactly that thing in August, 1872, which in October, two years before, was known to everybody to be the general election, and which all concede will be the general election when it occurs in October, 1874; and yet for some reason it is insisted that it was, nevertheless, not a general election then. It is unnecessary to enlarge upon what is a general election. Definitions are easy. The case under consideration seems to us to comprehend all the elements of what we every day speak of and recognize as a general election. It was the only general election held in 1872. It was intended to and did provide the entire official staff of the State government, from highest to lowest, as will appear from the ticket used by the voters on that occasion, a copy of which is transcribed; and if not a general election within the fair and ordinary meaning of the term; we confess our inability to discover wherein.

TICKET.

For governor:
For auditor:
For treasurer:
For attorney-general:
For judge of court of appeals:
For superintendent of free schools:
For Congress, second district:
For judge of second judicial circuit:
For State senator, tenth district:
For house of delegates:
For sheriff:
For clerk of circuit court:
For clerk of county court:
For president of county court:
For prosecuting attorney:
For surveyor of lands:
For assessor, eastern district:
For assessor, western district:
For magistrates:
For constables:
For inspector of election:
For purchase of poor-house farm:
Against purchase of poor-house farm:
For road surveyor, — district:

This brings us to the question whether, conceding that the August election was the general election for State and local officers in 1872, and that the second section of said code carries the election of Representatives to it, the time was sufficiently "prescribed" within the Federal Constitution which declares that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof."

We maintain the affirmative of this proposition. Even if we concede that the word "prescribe" shall have here its narrowest and most technical signification, there seems to us to have been a sufficient prescription of the time.

The schedule submitted with the new constitution provides that, in case of adoption, the same shall be deemed and taken to have been in force from and during the whole of said fourth Thursday of August.

The law knows no fraction of a day. Being ratified, it became and was in fact as well as legal intendment, the law of the State prior to the opening of the polls on that day. The time was therefore prescribed, when the ballot-boxes were opened on that day. That is to say, the law making that day the day of the general election for State and local officers was in force before a vote was polled.

But it is said that this was not a prescription of the time, because, if the constitution had not been ratified, the election would have amounted to nothing. Saying nothing just here about the impolicy and injustice of applying so technical a rule for the purpose of disfranchising a State, we submit that it is too late to raise that question. In a series of cases running back through many years, the House has given another and different construction to the word.

The constitution of California was, without any enabling act, framed on the 13th of October, 1849. It was ratified on the 13th of November, 1849. The eighth section of the schedule contained these words:

At the general election aforesaid, namely, the 13th day of November next, there shall be elected a governor, lieutenant-governor, members of the legislature, and also two members of Congress.

On the ninth of September, 1850, the State was admitted and the Representatives took their seats.

The State of Arkansas framed a new constitution in 1868, which was submitted for ratification or rejection on the 13th day of March, 1868, and on successive days; and at the same time the people were authorized to elect "members of the House of Representatives and State officers."

In 1867 the State of Louisiana framed a new constitution, which was submitted to the people on the 17th and 18th days of April, 1868. The schedule provided for the election of State officers and "congressional Representatives" on the same days.

Precisely the same thing occurred in the States of Minnesota, Mississippi, South Carolina, Nebraska, Nevada, Alabama, and Texas.

In each and all of these cases there was no pre-written designation, no fixing beforehand of the time of electing Representatives than as stated above. In each instance the time for electing such Representatives had the same element of uncertainty as in the case at bar, and yet Representatives were elected in every one of these States on just such a prescription of the time, and admitted to their seats after due and careful deliberation.

It is no answer to aver that these were new States. It makes no difference whatever, so far as the construction of the term "prescribe" is concerned, whether the power making the prescription be the constitutional convention or the legislature. If the only permissible construction of that word requires that the time shall be determined antecedent to the day of the election, and determined beyond any contingency, as claimed, it is utterly immaterial whether it is to be done by one authority or another.

Nor can it be claimed that, as no legislature of a State could exist prior to the birth of the State itself, therefore the time could not be prescribed. The constitutional convention had authority to prescribe a time, after its ratification, for the election of Representatives. The case of Michigan is in point. The State constitution was adopted on the 24th day of June, 1835. Section 6 of the schedule contained these words:

The first election of governor, lieutenant-governor, members of the State legislature, and a Representative in the Congress of the United States, shall be held on the first Monday of October next and on the succeeding day.

The Representative was so elected on the first Monday and succeeding day in October, 1835, and was subsequently admitted to his seat in the House.

See also the case of Iowa. The constitution of Iowa was adopted May 18, and ratified August 3, 1846. The sixth section of the schedule provides as follows:

The first general election under this constitution shall be held at such time as the governor of the Territory, by proclamation, may appoint, within three months after its adoption, for the election of a governor, two Representatives in the Congress of the United States (unless Congress shall provide for the election of one Representative), members of the general assembly, and one auditor, treasurer, and secretary of state.

Representatives were chosen under the governor's proclamation on the 26th of October, 1846, and subsequently admitted to seats in the House.

We are very firmly impressed with the conviction that the precedents cited are conclusive upon this question. The word "prescribe," as used in the Constitution of the United States in connection with the election of Representatives, may well be said to have a settled meaning and construction.

We may add, in conclusion, that we are all the more willing to follow this construction in the present case, because it saves us from the alternative of disfranchising a State, while it seems to do no injustice to any one.

As a precedent, it is entirely without consequence one way or the other, because Congress has already fixed a uniform time for electing Representatives in Congress, and thus taken the whole subject out of State control, after the year 1876.

In view of the foregoing considerations, and of the further facts that nearly double the number of votes were polled in August as in October; that the Representative from the third district has already taken his seat and entered on his duties; that in the first district, at the August election, a joint discussion was held, a large vote was polled—larger than that for several of the candidates on the State ticket—and that no public interest is likely to be subserved by imposing upon the State the expense, agitation, and delay of another election, we are in favor of sustaining the August election.

G. W. HAZELTON.
J. W. ROBINSON.

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## GUNTER vs. WILSHIRE.—THIRD CONGRESSIONAL DISTRICT OF ARKANSAS.

The Clerk of the House refused to place the name of either of the persons claiming to have been elected upon the roll of the House, and the case devolved upon the *prima-facie* right of either claimant to a seat upon the certificate issued by the secretary of state and governor presenting a tabulated statement of the votes cast. Neither party held the governor's certificate.

The House recommitted the case February 18, 1874, to the committee for investigation upon the merits, and time was given to the parties to take testimony.

Majority and minority reports submitted.

Minority report rejected February 17, 1874—yeas, 116; nays, 117; not voting, 56.

Majority report adopted February 17, 1874—yeas, 118; nays, 96; not voting, 75.

W. W. Wilshire sworn in February 18, 1874.

Authorities referred to: Laws of Arkansas, act 63, 1868; Constitution of Arkansas, sec. 24, art. 6; Gould's Digest, chap. 156; Session Laws, 39th Congress, page 28; Giddings *vs.* Clark, 42d Congress; Foster *vs.* Covode, 2d Bartlett, page 519.

February 9, 1874.—Mr. Thomas, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom were referred the cases of contested elections from the first and third Congressional districts of Arkansas, submit the following report upon the case (as a prima-facie one) of Thomas M. Gunter* vs. *W. W. Wilshire, from the third district:*

The resolution of the House is as follows, to wit:

*Resolved*, That the credentials and papers, in possession of the Clerk of the House, in the cases of contested elections from the first and third districts of Arkansas be referred to the Committee on Elections, with instructions to report at the earliest day practicable who of the contesting parties are entitled to be sworn in as sitting members of this House.

The case of Lucien C. Gause *vs.* Asa Hodges, from the first Congressional district, has already been reported to and decided by the House in favor of Mr. Hodges, who has been sworn in and admitted to a seat upon his *prima-facie* right thereto.

The credentials and papers referred are similar in both cases. So far as they relate to the question of *prima-facie* right, in the opinion of the committee, those which respect the case between Gunter *vs.* Wilshire, emanating from the same authority, and made in accordance with the same laws of the State of Arkansas, are entitled to like competency and weight as evidence as those in Gause *vs.* Hodges.

The credentials referred are as follows, to wit:

*Abstract and certificate of secretary of state, to wit:*

CONGRESS—THIRD DISTRICT.

| Counties. | W. W. Wilshire. | Thos. M. Gunter. | Thos. M. Gunther. | Scattering. |
|---|---|---|---|---|
| Benton | 255 | 1,189 | | |
| Boone | 186 | 746 | | |
| Carroll | 272 | 330 | | |
| Crawford | 932 | 590 | | |
| Clark | 1,317 | 806 | | |
| Franklin | 529 | 259 | | |
| Johnson, no returns | | | | |
| Little River | 505 | 276 | | |
| Madison | 434 | 557 | | |
| Marion | 140 | 684 | | |
| Montgomery | 177 | | 407 | |
| Newton | 278 | 184 | | |
| Pulaski | 3,160 | 1,974 | | 1,127 |
| Perry | 168 | 81 | | |
| Pope | 521 | 310 | | |
| Pike | 226 | 125 | | |
| Polk | 120 | 342 | | |
| Scott, no returns | | | | |
| Sebastian | 1,017 | 578 | | |
| Sevier | 264 | 425 | | |
| Washington | 701 | 1,218 | | |
| Yell | 536 | 1,011 | | |
| Sarber | 784 | 276 | | |
| Total | 12,522 | 11,961 | 407 | 1,127 |

(1.)

OFFICE OF SECRETARY OF STATE, ARKANSAS.

I, J. M. Johnson, secretary of state, Arkansas, certify that the above abstract is a true copy of the original now in my office, and exhibits a true statement of the vote cast for Congressman, third congressional district, Arkansas, at the election November 5, 1872, according to the returns in my office; and I also certify that the same was cast up and arranged by me in presence of Acting Governor O. A. Hadley, within the time and in the manner prescribed by statute.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Little Rock, this 13th day of January, A. D. 1873.

[L. S.] J. M. JOHNSON, *Secretary of State.*

(2.)

OFFICE OF SECRETARY OF STATE, ARKANSAS.

I, J. M. Johnson, secretary of state of Arkansas, do hereby certify that since the vote for Congressman in the third district, Arkansas, was cast up and arranged by me, in the presence of Acting Governor O. A. Hadley, on or about the 14th of December, 1872, no other returns were received by me from any county not shown on the copy of the abstract marked "A," and hereto attached, except from the county of Johnson, which said return was received on or about the 27th day of December, 1872, and shows the following as the vote for Congressman in the third district, in said county, namely:

For W. W. Wilshire ..... 119 votes.
For Thomas M. Gunter. ..... 75 votes.

In testimony whereof I have hereunto set my hand and affixed my official seal at Little Rock, this 20th day of November, A. D. 1873.

[SEAL.]

J. M. JOHNSON,
*Secretary of State,*
By FRANK STRONG,
*Deputy.*

*Proclamation by the governor.*

Whereas an election was held on the 5th day of November, A. D. 1872, in the third Congressional district of the State of Arkansas, for a Representative in Congress from said district; and

Whereas, on the 14th day of February, A. D. 1873, the secretary of state, in my presence, did cast up the votes polled for said Representative at said election, a full, true, and correct abstract of which is contained and set forth in the following statement, with explanatory notes, to wit:

| Counties composing the third Congressional district. | Votes polled for W. W. Wilshire. | Votes polled for Thos. M. Gunter. | Votes polled for Wilshire. | Votes polled for Gunther. |
|---|---|---|---|---|
| Benton | 255 | 1,189 | ..... | ..... |
| Boone* | 188 | 746 | ..... | ..... |
| Carroll | 272 | 330 | ..... | ..... |
| Crawford | 932 | 590 | ..... | ..... |
| Clark | 1,317 | 806 | ..... | ..... |
| Franklin | 529 | 259 | ..... | ..... |
| Johnson | 119 | 75 | ..... | ..... |
| Little River | 505 | 276 | ..... | ..... |
| Madison | 434 | 557 | ..... | ..... |
| Marion | 140 | 684 | ..... | ..... |
| Montgomery† | 177 | ..... | ..... | 407 |
| Newton† | 278 | ..... | ..... | 184 |
| Pulaski‡ | 3,160 | 1,621 | 12 | ..... |
| Perry | 168 | 81 | ..... | ..... |
| Pope | 521 | 310 | ..... | ..... |
| Pike | 226 | 125 | ..... | ..... |
| Polk | 120 | 342 | ..... | ..... |
| Sebastian | 1,017 | 578 | ..... | ..... |
| Sevier | 264 | 425 | ..... | ..... |
| Washington § | 702 | 1,218 | ..... | ..... |
| Yell | 536 | 1,011 | ..... | ..... |
| Sarber‖ | 784 | 276 | ..... | ..... |
| Total | 12,644 | 11,499 | 12 | 591 |

NOTES.

Scattering votes polled for Gunter, S. M. Gunter, T. M. Guntee, Thos. M. Guntee, T. Ros Gunter, and Thos. M. Crenter, in Pulaski County, 1,456.

* Boone County has not been made a part of the third Congressional district by any act of the legislature.

† The votes given to "Gunther" from Montgomery and Newton Counties were probably intended for Thomas M. Gunter.

‡ The scattering vote in Pulaski County, given to "Wilkshire," "Guntee," "S. M. Gunter," "T. M. Guntee," "Thos. M. Guntee," "T. Ros Gunter," and "Thos. M. Crenter," is a literal copy of the clerk's returns.

§ A certificate of the clerk is appended to the returns from Washington County, questioning the validity of the election in Richland Township. If this objection is allowed to stand, the vote will stand, for Wilshire, 686, and Gunter, 1,125.

‖ Sarber County has not been made a part of the third Congressional district by any act of the legislature. There are no returns from the clerk of Scott County.

And whereas the result of said election has not been proclaimed by the acting governor: Now, therefore, I, Elisha Baxter, governor of the State of Arkansas, by virtue of the authority vested in me by law, do hereby make proclamation of the same.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at Little Rock, this the 18th day of February, A. D. 1873.

[L. S.] ELISHA BAXTER, *Governor.*

By the governor:

J. M. JOHNSON, *Secretary of State.*

The following is the certificate:

*Abstract of the returns of the election held in the third Congressional district of the State of Arkansas, on the 5th day of November, A. D. 1872, for Representative in Congress.*

| Counties composing the third Congressional district. | Votes polled for W. W. Wilshire. | Votes polled for Thos. M. Gunter. | Votes polled for Wilshire. | Votes polled for Gunther. |
|---|---|---|---|---|
| Benton | 255 | 1,189 | ..... | ..... |
| Boone * | 188 | 746 | ..... | ..... |
| Carroll | 272 | 330 | ..... | ..... |
| Crawford | 932 | 590 | ..... | ..... |
| Clark | 1,317 | 806 | ..... | ..... |
| Franklin | 529 | 259 | ..... | ..... |
| Johnson | 119 | 75 | ..... | ..... |
| Little River | 505 | 276 | ..... | ..... |
| Madison | 434 | 557 | ..... | ..... |
| Marion | 140 | 684 | ..... | ..... |
| Montgomery † | 177 | ..... | ..... | 407 |
| Newton † | 278 | ..... | ..... | 184 |
| Pulaski ‡ | 3,160 | 1,621 | 12 | ..... |
| Perry | 168 | 81 | ..... | ..... |
| Pope | 521 | 310 | ..... | ..... |
| Pike | 226 | 125 | ..... | ..... |
| Polk | 120 | 342 | ..... | ..... |
| Sebastian | 1,017 | 578 | ..... | ..... |
| Sevier | 264 | 425 | ..... | ..... |
| Washington § | 702 | 1,218 | ..... | ..... |
| Yell | 536 | 1,011 | ..... | ..... |
| Sarber ‖ | 784 | 276 | ..... | ..... |
| Total | 12,644 | 11,499 | 12 | 591 |

Scattered votes polled for Guntee, S. M. Gunter, T. M. Guntee, Thos. M. Guntee, T. Ros Gunter, and Thomas M. Crenter, in Pulaski County, 1,456.

* Boone County has not been made a part of the third Congressional district by any act of the legislature.

† The votes given to "Gunther" from Montgomery and Newton Counties were probably intended for Thomas M. Gunter.

‡ The scattering vote in Pulaski County given to "Wilshire," "Guntee," "S. M. Gunter," "T. M. Guntee," "Thos. M. Guntee," "T. Ros Gunter," and "Thos. M. Crenter," is a literal copy of the clerk's returns.

§ A certificate of the clerk is appended to the returns from Washington County, questioning the validity of the election in Richland Township. If this objection is allowed the vote will stand: For Wilshire, 686, and Gunter, 1,125.

‖ Saber County has not been made a part of the third Congressional district by any act of the legislature. There are no returns from the clerk of Scott County.

STATE OF ARKANSAS, *Executive Office:*

Whereas the acting governor failed to issue a certificate of election to the person who received the highest number of votes for Representative in Congress from the third Congressional district of Arkansas, at the election held in said district on the 5th day of November, A. D. 1872; and whereas, on the 14th day of February, A. D. 1873, the secretary of state, in my presence, did cast up the votes polled for said Representative at said election from the returns on file in his office: Now, therefore, I, Elisha Baxter, governor of the State of Arkansas, do certify that the foregoing statement, with the explanatory notes, is a full, true, and correct exhibit of the votes polled for Representative from the third Congressional district of Arkansas, at the election held in said district on the 5th day of November, A. D. 1872, as appears from the returns of said election on file and certificates of clerks deposited in the office of secretary of state.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at Little Rock, on this 18th day of February, A. D. 1873.

[L. S.] ELISHA BAXTER, *Governor.*

By the governor:

J. M. JOHNSON, *Secretary of State.*

The following sections of Act LXXIII, Laws of Arkansas, 1858, are quoted as relating to the case:

SEC. 34. After canvassing the votes as aforesaid, the judges, before they shall disperse, shall put under cover one of the poll-books, seal the same, and direct it to the clerk of the county of their respective counties.

SEC. 35. And the poll-books thus sealed and directed shall be conveyed by one of the judges, to be determined by lot, if they cannot otherwise agree, to the clerk of the county court within *three* days after the closing of the polls.

SEC. 37. If any judge of election in any election district, whose duty it may be, shal fail to deliver to the clerk of the county court the *return* and poll-books of said election, within three days, as provided by law, on the fourth day the clerk of the said court shal dispatch a messenger to bring up the same, in which case the poll-books shall not be compared until the *seventh* day; and all expenses incurred by sending the messenger shall be paid by the defaulting judge of election.

* * * * * * *

SEC. 39. On the fifth day after the election (except in cases provided for in section thirty-seven), or sooner if all the returns have been received, the clerk of the county court shall proceed to open and compare all the several election returns *which have been made to his office*, and make abstract of the votes given for the several candidates for such office on separate sheets of paper. Such abstracts being signed by the clerk shall be deposited in the office of clerk of the county court, there to remain.

* * * * * * *

SEC. 42. Each clerk of the county court shall, within two days after the examination and comparison of the returns of any election, deposit in the nearest post-office, on the most direct route to the seat of government, certified copies of the abstracts filed in his office of the returns of the election of all executive, judicial, and legislative officers, and presidential electors, directed to the secretary of state, and he shall at the same time inclose and direct to the speaker of the house of representatives at the seat of government a certified copy of the abstract of [the] votes given for governor, if an election for governor was held at the same time. And he shall also, at the same time, inclose and direct to the governor a certified copy of the abstract of votes given for presidential electors, if any election for presidential electors was held, at the same time.

* * * * * * *

SEC. 50. It shall be the duty of the secretary of state. in the presence of the governor, within thirty days after the time herein allowed, to make returns of elections to the clerks of the county courts, or sooner if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as have made returns, for such persons voted for as members of Congress; and the governor shall immediately thereafter issue his proclamation declaring the person having the highest number of votes to be duly elected to represent the State in the House of Representatives of the Congress of the United States, and shall grant a certificate thereupon under the seal of the State to the person so elected.

The twentieth section, article sixth, of the constitution of the State of Arkansas, requires records of every official act of the governor shall be recorded. It is in these words:

The secretary of state shall keep a fair record of all *official acts and proceedings of the governor*, and shall, when required, lay the same and all papers, minutes, and vouchers, relating thereto, before the general assembly, and shall perform such other duties as are now or may hereafter be prescribed by law.

And the provisions of the statute are as follows (see Gould's Digest, chapter 156):

SEC. 7. The secretary of state shall keep a seal of office, surrounded with the words, "Seal of the secretary of state, Arkansas," and shall make out and deliver to any person requiring the same copies of any act, resolution, or order of the general assembly, commissioner, or *other official acts of the governor*, and of all rolls, records, documents, *papers*, bonds, and recognizances *deposited in his office, and required by law there to be kept*, and *certify* said copies under his hand, and affix the seal of office thereto; and such copies so authenticated shall be received in evidence in any court in this State with like effect as the original.

The foregoing "credentials and papers" and laws of Arkansas are set forth in order that the House may have a fair and full statement of the case referred. The committee do not consider them all either material or necessary to the conclusion to which they have arrived.

By the act of the second session, Thirty-ninth Congress (Session Laws, p. 28), it is provided:

That before the first meeting of the next Congress, and of every subsequent Congress, the Clerk of the next preceding House of Representatives shall make a roll of the Repre-

sentatives elect, and place thereon the names of persons claiming seats as Representatives elect from States which were represented in the next preceding Congress, and of such persons only, *and whose credentials show* that they were regularly elected in accordance with the laws of their States respectively or the laws of the United States.

The most usual kind of credential is a certificate of the governor of a State, and such kind is required by the law of Arkansas. No particular form of one has heretofore been considered necessary by the House; and while such certificate, when it showed that the person named therein was regularly elected, &c., has always been admitted and held to be competent and satisfactory evidence of *prima-facie* right to a seat, the House has frequently decided that the want of it from any reason would not impair or prejudice such *prima-facie* right of a member elect, but only remit him to other evidence to establish it.

Do the credentials and papers referred to the committee by the House resolution, any one or all of them, show that either Mr. Wilshire or Mr. Gunter was regularly elected in accordance with the laws of Arkansas; or do they establish the *prima-facie* right of either to a seat?

In the opinion of the committee, they furnish satisfactory evidence to establish the *prima-facie* right of W. W. Wilshire to his seat. In their opinion the certificate of Governor Baxter is in itself sufficient in form and substance and legal intendment to establish such right of Mr. Wilshire. It indicates, or shows, that W. W. Wilshire received 12,644 votes, being a majority of 1,145 votes for Mr. Wilshire by the "abstract of the returns of the election held in the third Congressional district of the State of Arkansas on the 5th day of November, 1872, for Representative in Congress"; and assuming that, as matter of law, the votes of the counties of Boone and Sarber should not have been counted or "arranged and cast up," because these counties had "not been made parts of the third Congressional district by any act of the legislature," then the said certificate shows that Mr. Wilshire received a majority of 1,195 votes. And the certificate of Governor Baxter is to the effect that W. W. Wilshire was "duly elected," and is in accordance with the laws of Arkansas before cited and mentioned.

The failure, from whatever cause it arose, of the acting governor, O. A. Hadley, in whose presence the secretary of state did cast up and arrange the votes from the several counties, &c., to issue the proclamation and grant the certificate—a duty which the laws of the State devolved upon him, and the act of Congress of May 31, 1870, as well (and said act made it a criminal offense in that he neglected or refused to do so), could not prejudice the right of the people of the third Congressional district, or of the person who had been chosen by them as Representative to the Forty-third Congress in pursuance of their obligation under the national Constitution. Such a failure, in any instance, ought not to be allowed by the House to hinder, impede, or delay the right of representation of the people of a district, or the right of the person chosen by them to a seat pending a contest upon the merits, when "that amount of proof which ordinarily satisfies an unprejudiced mind, beyond reasonable doubt," is produced in a case before it.

The statute of Arkansas in relation to elections (section 50, before cited) is *directory*, and upon the omission or failure of Governor Hadley to issue a proclamation and grant a certificate, his successor, Governor Baxter, was required to do so. He (Governor Baxter), as a ministerial and official person authorized and required by said statute, did issue the proclamation and certificate referred to the committee—issued them with intent to declare to the House who therein named had received the highest number of votes, and so who was elected to represent the State in the Congress of the United States.

The proclamation was intended to make known the "result of said election"—the election held in the third Congressional district of the State of Arkansas, on the 5th day of November, A. D. 1872, for Representative to Congress; and the certificate signed by the governor, under the seal of the State, was intended to be a "full, true, and correct exhibit of the votes polled," &c., at said election. It is shown on the face of each that W. W. Wilshire received a majority of the votes polled over Thomas M. Gunter; and words as "duly elected," or other words declaratory of the fact or result, would be non-essential, if not surplusage.

A strict adherence to any prescribed or particular form of credential, or to legal rules of evidence in a *prima-facie* case of election, would tend to prejudice the rights of the party claiming to have been elected, and of the people as well, and to prevent the organization of the House.

The *prima-facie* case of Giddings *vs.* Clark, reported and decided by the House during the first session of the Forty-second Congress, and the *prima-facie* case of Foster *vs.* Covode (Bartlett's Digested Cases, vol. 2, page 519), are authorities or precedents both as to the form of credentials and the amount of proof which the House has decided to be necessary to establish *prima-facie* right. These cases would seem to be decisive of the present case.

The committee, therefore, report the following resolution and recommend its adoption:

*Resolved*, That W. W. Wilshire is entitled *prima-facie* to a seat in the Forty-third Congress as Representative from the third Congressional district of the State of Arkanas, without prejudice to the right of Thomas M. Gunter, claiming to have been elected thereto, to contest his right to said seat upon the merits.

C. R. THOMAS,
*For Majority of Committee on Elections.*

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MINORITY REPORT.

Mr. Lamar submits the following as the views of the minority:

The undersigned dissent from the resolution reported by a majority of the committee in this case, and also from the reasoning presented in support of said resolution. We hold that, even upon the instruments of evidence to which the majority profess to have confined their investigation, it is obvious, first, that W. W. Wilshire is not entitled, *prima facie*, to a seat upon this floor as the sitting member pending the contest; and, second, that Thomas M. Gunter is the duly-elected member of Congress from the third district of Arkansas.

By the law of Arkansas it is the duty of the governor, immediately after the votes from the counties in the district are cast up and arranged by the secretary of state in his presence, to issue his proclamation declaring the person having the highest number of votes to be duly elected as a Representative in Congress, and to grant a certificate thereof, under the seal of the State, to the person so elected. The following is the language of the statute:

SEC. 50. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of elections to the clerks of the county courts, or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as have made returns, for such persons voted for as members of Congress; and the governor shall immediately thereafter issue his proclamation, *declaring the person having the highest number of votes to be duly elected* to represent the State in the House of Representatives of the Congress of the United States, *and shall grant a certificate thereof*, under the seal of the State, *to the person so elected.*—(Election Law, approved July 23, 1868.)

Such a certificate, issued in due form, gives to the person so elected a *prima facie* right to be admitted as a member of this House; but if a person claiming to be elected has no certificate in due form declaring him to be duly elected, whatever may be the merits of his title as developed by proof, he has no *prima-facie* right to be sworn in pending a contest as to the fact of his election.

The question then arises, does W. W. Wilshire present to the committee, and, through the committee, to this House, a certificate in due form from the governor of the State, declaring W. W. Wilshire "to be duly elected to represent the State in the House of Representatives of the Congress of the United States?"

There can be but one answer to this inquiry. He does not and cannot present such a certificate.

Three is a certificate filed by him, issued by the governor of the State of Arkansas, which does not declare or show him to be duly elected, but simply gives a statement of the votes cast, from which statement it cannot be ascertained who was elected; and a certificate is on file, in every respect identical in substance and letter, which was issued at the same time to his competitor, Thomas M. Gunter.

It cannot, therefore, be said that the governor has issued a *certificate of election* to Mr. Wilshire.

In order that the House may fully understand the true purport and purpose of this so-called certificate, we here give an exact copy of that document:

*Abstract of the returns of the election held in the third Congressional district of the State of Arkansas, on the 5th day of November, A. D. 1872, for Representative in Congress.*

| Counties composing the third Congressional district. | Votes polled for W. W. Wilshire. | Votes polled for Thos. M. Gunter. | Votes polled for Wilshire. | Votes polled for Gunther. | Scattered votes polled for Guntee, S. M. Gunter, T. M. Guntee, Thos. M. Guntee, T. Ros Gunter, and Thos. M. Crenter. |
|---|---|---|---|---|---|
| Benton | 255 | 1,189 | ..... | ..... | ..... |
| Boone* | 188 | 746 | ..... | ..... | ..... |
| Carroll | 272 | 330 | ..... | ..... | ..... |
| Crawford | 932 | 590 | ..... | ..... | ..... |
| Clark | 1,317 | 806 | ..... | ..... | ..... |
| Franklin | 529 | 259 | ..... | ..... | ..... |
| Johnson | 119 | 75 | ..... | ..... | ..... |
| Little River | 505 | 276 | ..... | ..... | ..... |
| Madison | 434 | 557 | ..... | ..... | ..... |
| Marion | 140 | 684 | ..... | ..... | ..... |
| Montgomery† | 177 | ..... | ..... | 407 | ..... |
| Newton† | 278 | ..... | ..... | 184 | ..... |
| Pulaski‡ | 3,160 | 1,621 | 12 | ..... | 1,456 |
| Perry | 168 | 81 | ..... | ..... | ..... |
| Pope | 521 | 310 | ..... | ..... | ..... |
| Pike | 226 | 125 | ..... | ..... | ..... |
| Polk | 120 | 342 | ..... | ..... | ..... |
| Sebastian | 1,017 | 578 | ..... | ..... | ..... |
| Sevier | 264 | 425 | ..... | ..... | ..... |
| Washington§ | 702 | 1,218 | ..... | ..... | ..... |
| Yell | 536 | 1,011 | ..... | ..... | ..... |
| Sarber‖ | 784 | 276 | ..... | ..... | ..... |
| Total | 12,644 | 11,499 | 12 | 591 | |

* Boone County has not been made a part of the third Congressional district by any act of the legislature.

† The votes given to "Gunther" from Montgomer yand Newton Counties were probably intended for Thomas M. Gunter.

‡ The scattering vote in Pulaski County given to "Wilshire," "Guntee," "S. M. Gunter," "T. M. Guntee," "Thos. M. Guntee," T. Ros Gunter," and "Thos. M. Crenter," is a literal copy of the clerk's returns.

§ A certificate of the clerk is appended to the returns from Washington County, questioning the validity of the election in Richland Township. If this objection is allowed, the vote will stand: For Wilshire, 686; and Gunter, 1,125.

‖ Sarber County has not been made a part of the third Congressional district by any act of the legislature. There are no returns from the clerk of Scott County.

STATE OF ARKANSAS, *Executive Office:*

Whereas the acting governor failed to issue a certificate of election to the person who received the highest number of votes for Representative in Congress from the third Congressional district of Arkansas, at the election held in said district on the 5th day of November, A. D. 1872; and whereas, on the 14th day of February, A. D. 1873, the secretary of state, in my presence, did cast up the votes polled for said Representative at said election from the returns on file in his office: Now, therefore, I, Elisha Baxter, governor of the State of Askansas, do certify that the foregoing statement, with the explanatory notes, is a full, true, and correct exhibit of the votes polled for Representative from the third Congressional district of Arkansas, at the election held in said district on the 5th day of November, A. D. 1872, as appears from the returns of said election on file and certificates of clerks deposited in the office of secretary of state.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at Little Rock, on this 18th day of February, A. D. 1873.

[L. S.] ELISHA BAXTER, *Governor.*

By the governor:

J. M. JOHNSON, *Secretary of State.*

Can it be said that this is a certificate of Mr. Wilshire's election, or that the governor who issues it certifies that even in his opinion W. W. Wilshire was duly elected?

The Clerk of this House, in the exercise of his legal duty and power of determining, in making up the roll, the regularity of credentials and the right of members *prima facie* to seats upon this floor, refused to place the name of either of the persons mentioned in this certificate upon the roll of the House, and it was this action on the part of the Clerk that caused the House to refer to the committee for investigation the question of the *prima-facie* right thereon arising.

Now, if the construction which a majority of the committee have put upon this resolution of the House is the true one, and it necessarily confines the investigation of the committee to the instrument by which the *prima facie* right is established, it follows that they should not have extended their inquiries beyond the face of this certificate, nor thrown before this House any information derived from evidence and proofs of a secondary character. Upon their construction of the resolution the proper course, in the opinion of the undersigned, would have been to have reported a resolution to the House that no *prima-facie* right to a seat on this floor existed in this case.

Let us now examine this certificate and see if, from the facts therein stated, the committee had before them data sufficient to determine who, in the absence of any proof to the contrary, was the person duly elected. We have seen that no person was therein *declared* to have been duly elected.

The certificate shows that 12,644 votes were cast for W. W. Wilshire; that 11,499 votes were cast for Thomas M. Gunter, *eo nomine*, and that 1,456 votes were returned in unspecified proportions for Thomas M. Gunter and Thomas M. Crenter, those for Thomas M. Gunter being returned under different designations, each, however, clearly indicating Thomas M. Gunter as the person voted for. Now, can it be said that there is here any evidence that W. W. Wilshire received a larger number of votes than Thomas M. Gunter? It is clear that if Thomas M. Crenter received only 30 or 40 of these 1,456 votes, Thomas M. Gunter is the person duly elected. It is also equally clear that if Thomas M. Crenter received a larger proportion of the 1,456 votes than Thomas M. Gunter, then W. W. Wilshire is elected. But it is impossible to determine from anything on the face of this certificate what was the actual vote cast for Thomas M. Crenter, and therefore equally impossible to determine which candidate received the most votes, W. W. Wilshire or Thomas M. Gunter. This is fatal to the certificate as the credentials of Mr. Wilshire. To ascertain who was elected, it becomes necessary to refer to other proofs, which opens an inquiry into the merits of the

case, and involves an abandonment of the *prima-facie* consideration. The only alternative, therefore, as it seemed to the undersigned, was to enter at once upon the question of the fact of the election, and if the committee deemed it had not power to do so under the resolution of the House, to ask of the House an enlargement of its powers.

While the undersigned believe that if the governor's certificate shows no *prima-facie* title to the seat on account of the doubt as to the identity of Thomas M. Crenter, it is the duty of the committee to inquire at once into the merits of the case, and to consider all the proofs bearing upon the merits, including the depositions as well as the documentary proofs; they are at the same time clearly of the opinion that the documentary proofs, outside of the certificates, show a large majority in favor of Mr. Gunter.

Among the sources of information outside of the said certificate, which have been especially relied upon to make out the *prima-facie* right of W. W. Wilshire, is a certified copy of a paper on which the secretary of state pretends to have cast up and arranged the votes for members of Congress. As this paper clearly discloses the source and the object of the uncertainty which marks the governor's certificate, we append hereto an exact copy:

CONGRESS—THIRD DISTRICT.

| Counties. | W. W. Wilshire. | Thos. M. Gunter. | Thos. M. Gunther. | Scattering. |
|---|---|---|---|---|
| Benton | 255 | 1,189 | ..... | ..... |
| Boone | 186 | 746 | ..... | ..... |
| Carroll | 272 | 330 | ..... | ..... |
| Crawford | 932 | 590 | ..... | ..... |
| Clark | 1,317 | 806 | ..... | ..... |
| Franklin | 529 | 254 | ..... | ..... |
| Johnson (no returns). | | | | |
| Little River | 505 | 276 | ..... | ..... |
| Madison | 434 | 557 | ..... | ..... |
| Marion | 140 | 684 | ..... | ..... |
| Montgomery | 177 | ..... | 407 | ..... |
| Newton | 278 | 184 | ..... | ..... |
| Pulaski | 3,160 | 1,974 | ..... | 1,127 |
| Perry | 168 | 81 | ..... | ..... |
| Pope | 521 | 310 | ..... | ..... |
| Pike | 226 | 125 | ..... | ..... |
| Polk | 120 | 342 | ..... | ..... |
| Scott (no returns). | | | | |
| Sebastian | 1,017 | 578 | ..... | ..... |
| Sevier | 264 | 425 | ..... | ..... |
| Washington | 701 | 1,218 | ..... | ..... |
| Yell | 536 | 1,011 | ..... | ..... |
| Sarber | 784 | 276 | ..... | ..... |
| Total | 12,522 | 11,961 | 407 | 1,127 |

OFFICE OF SECRETARY OF STATE, ARKANSAS.

I, J. M. Johnson, secretary of state, Arkansas, certify that the above abstract is a true copy of the original now in my office, and exhibits a true statement of the vote cast for Congressman, third Congressional district, Arkansas, at the election November 5, 1872, according to the returns in my office; and I also certify that the same was cast up and arranged by me in presence of Acting Governor O. A. Hadley, within the time and in the manner prescribed by statute.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Little Rock, this 13th day of January, A. D. 1873.

[L. S.]

J. M. JOHNSON,
*Secretary of State.*

A glance at this remarkable paper shows that, so far from being an honest, fair, and intelligible casting up, it was a fraudulent contrivance

to conceal the fact unmistakably shown by the returns in his office, that Thomas M. Gunter had received a majority of the votes for member of Congress. Why did he not, as the law directed him to do, cast up and arrange for the several persons voted for as members of Congress the 1,127 votes from Pulaski County which he simply calls "scattering?" Certainly, the effect of placing under the head of "scattering," without any designation of the names, these 1,127 votes, which in number greatly exceed the difference between the votes reported for W. W. Wilshire and those reported for Thomas M. Gunter, is to leave it not only doubtful, but absolutely impossible to determine from the face of the paper what person received the largest number of votes for member of Congress. This is fatal to this paper as the unsupported credentials of Mr. Wilshire. The governor's certificate stating that "the scattering vote in Pulaski County, given to 'Wilshire,' 'Guntee,' 'S. M. Gunter,' 'T. M. Guntee,' 'Thos. M. Guntee,' 'T. Ros Gunter,' and 'Thos. M. Crenter,' is a literal copy of the clerk's return," partially shows the motive; but the transcript of the returns of Pulaski County lays bare the atrocious fraud which the secretary of state designed to perpetrate by the use of this word "scattering." They show that all of these votes, except 12 for Wilshire and 32 for Thomas M. Crenter were cast, not "scattering," not even for Guntee nor T. Ros Guntee, as the governor has been led to certify, but for Thomas M. Gunter, the contestant in this case, either in full or by obvious designations.

We here append said transcript, and ask for it the careful consideration of this House:

*Abstract of returns of an election held in Pulaski County, Arkansas, on Tuesday, November 5, A. D. 1872.*

CONGRESS—THIRD DISTRICT.

| | W. W. Wilshire. | Thos. M. Gunter. | S. M. Gunter. | Thos. M. Gunter. | Wilshire. | Gunter. | T. M. Gunter. | Thos. M. Gunter. | Thos. N. Gunter. | Thos. M. Gunter. | Thomas M. Crenter. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashley | 324 | | | | | | 277 | | | | |
| Bayou Meto | 1 | | | | | | 76 | | | | |
| Big Rock | 294 | 253 | | | | | | | | | |
| Badgett | 106 | 41 | | | | | | | | | |
| Clear Lake | 49 | 29 | | | | | | | | | |
| Cypress | | | | | | | | 50 | | | |
| Campbell | 318 | | | | | | | | 33 | | |
| Caroline | 31 | | | | | | | | | 506 | |
| Eastman | 494 | 16 | | | | | | | | | |
| Eagle | 109 | 52 | | | | | | | | | |
| Fourche | 68 | 83 | | | | | | | | | |
| Gray | 75 | | | | | | | | | | |
| Maumelle | 4 | | | 56 | | | | | | | |
| Mineral | 3 | | | | | | | | | | 32 |
| Owen | 27 | 86 | | | | | | | | | |
| Prairie | | | | | 12 | 138 | | | | | |
| Plant | 12 | 57 | | | | | | | | | |
| Pyeatt | 55 | 88 | | | | | | | | | |
| Richwoods | 36 | 35 | | | | | | | | | |
| Union | 31 | 46 | | | | | | | | | |
| City of Little Rock— | | | | | | | | | | | |
| First Ward | 295 | | | 287 | | | | | | | |
| Second Ward | 187 | 178 | | | | | | | | | |
| Third Ward | 431 | 443 | | | | | | | | | |
| Fourth Ward | 220 | 214 | 1 | | | | | | | | |
| | 3,160 | 1,621 | 1 | 343 | 12 | 138 | 353 | 50 | 33 | 506 | 32 |

Filed November 18, 1872.

I hereby certify that the above is a correct copy of the original now on file in my office.
[SEAL.] J. R. ROLAND,
*County Clerk, Pulaski County, Arkansas.*

JANUARY 10, 1873.

We ask the members of the House to mark that T. M. Guntee, Thos. M. Guntee, Guntee, T. Ros Gunter, nowhere appear in this transcript. It is true that there is on file a statement of the vote of Pulaski County, certified to by this same secretary of state, which makes Caroline Township, in said Pulaski County, give a vote of 506 for T. Ros Gunter, but this cannot have any weight as against the official transcript given above, and sworn to by the clerk of the county of Pulaski, for the clerk's transcript is a *transcript of the original*, while the secretary's is only a *transcript of a copy*. The secretary's transcript is not only lower in dignity as an instrument of evidence, if admissible at all, but it comes under the suspicion which must darken and taint any instrument bearing the certificate of that office. But if it were entitled to a moment's consideration, all doubt is removed by the return from Caroline precinct itself. We here give that return as filed with the evidence in this case, showing that what was represented as T. Ros Gunter is, as plain as chirography can make it, Thos. M. Gunter:

*Returns of an election held in the county of Pulaski, Caroline precinct, Tuesday, November 5, 1872.*

* * * * * * *

CONGRESSMAN—THIRD DISTRICT.

| | |
|---|---|
| Thos. M. Gunter | 506 |
| W. W. Wilshire | 31 |

* * * * * * *

We, James Jackson, George W. St. Clair, and Geo. P. Murrell, judges of election in and for Caroline precinct, hereby certify that the above number of votes were cast for each person named therein, and for the office stated.

GEO. W. ST. CLAIR,
GEO. P. MURRELL,
*Judges.*

The majority thus shown by the documentary evidence (excluding Scott County) in favor of Thomas M. Gunter is 869.

To any suggestion of the possible inaccuracy of the clerk's manuscript, it is a sufficient answer to say that the duplicate original poll-books and returns of precincts, and other proofs on file in this case, leave to doubt whatever as to the perfect accuracy of the transcript of the clerk's returns given above.

If it is said that this return from Pulaski County and these proofs just cited cannot be considered in a *prima-facie* case, we reply that we have referred to them not for the purpose of showing any *prima-facie* case for Mr. Gunter, but simply to show that, so far from remedying the defects of Mr. Wilshire's claim, based on the certificate either of the governor or of the secretary, they show Mr. Gunter to have been elected.

We have shown that neither the governor's certificate nor the secretary's casting up, standing by itself, establishes any *prima-facie* right to the contested seat in W. W. Wilshire. If it is said that the two supplement each other, each supplying the deficiency of the other, in answer we reply that the discrepancies and direct contradictions in these documents are so glaring and numerous as to neutralize the effect and destroy the validity of both as instruments of evidence.

For instance, the governor reports the Newton County vote of 184 for "Gunther;" the secretary reports it for Thomas M. Gunter. The governor reports the Montgomery County vote of 407 for Gunther; the secretary reports it for Thos. M. Gunther.

The governor reports 1,456 votes as "scattering" in Pulaski County; the secretary reports 1,127 as "scattering" in Pulaski County; the governor reports 1,621 votes for Thomas M. Gunter in Pulaski County; the secretary reports 1,974 for Thomas M. Gunter in Pulaski County. The governor (as will be seen by the clerk's transcript above referred to) reports the votes of Ashley and Bayou Meto, in Pulaski County, amounting to 353, for T. M. Guntee, while the secretary counts the same votes for Thomas M. Gunter.

The secretary signs both of these papers which so completely falsify each other, each of which explicitly state him to be its author. It seems to the undersigned that the fact that the documents so obviously false and so fatal to each other constitute the only foundation on which rests the *prima-facie* title of Mr. Wilshire imperiously demands that the case should be recommitted for examination on its merits.

The undersigned present to the House the returns of another county in the third district, which this secretary failed to count and the governor failed to determine and declare. We append hereto the returns of Scott County, certified by the county clerk, and the same returns certified under the seal of the secretary of state is on file in this case:

At a general election held in the several precincts in the county of Scott, State of Arkansas, on the 5th day of November, 1872, the following-named persons received the number of votes set under their respective names, for Congressman, from the third (3d) district:

| | Thomas M. Gunter. | W. W. Wilshire. |
|---|---|---|
| Hickman | 233 | 6 |
| Tomlinson | 96 | 75 |
| La Fayette | 54 | 3 |
| Brawley | 22 | |
| Black Fork | 26 | |
| Blancett | 22 | |
| Mountain | 42 | 1 |
| Park | 49 | 25 |
| Lafavre | 30 | |
| Hunt | 16 | 7 |
| Total | 590 | 117 |

STATE OF ARKANSAS, *County of Scott:*

We, the undersigned, do certify that the above is a true and perfect abstract of the votes cast for Congressman from the third (3d) district, in said county of Scott, on the 5th day of November, 1872, as the same appears from the returns of said election now on the file in the clerk's office of said county of Scott.

[SEAL.]

L. D. GILBREATH, *Clerk.*
J. H. PAYNE, *J. P.*
B. C. BRASHER, *Householder.*

It was not pretended that these returns came too late to be cast up and arranged according to law. It was not denied that the votes were cast precisely as indicated in the returns. But the entire vote of that county, giving Thomas M. Gunter a majority of 473 votes, was rejected upon the pretext that Gilbreath, the clerk, having resigned his office the day before the election, the abstract of the returns made out and forwarded by him was, by reason of that resignation, illegal and invalid. A mere statement of this pretext is sufficient to show with what facility and impunity the people of that ill-fated State may be despoiled of their rights as electors. If any answer is necessary, it is sufficient to state

that Gilbreath's successor was not appointed by the governor until some time after the election, until which time Gilbreath was the acting clerk, having the custody of the office and its records and files, and discharging the duties of clerk. And as such clerk he received the returns, filed them in the office, made out the required abstract, and forwarded a transcript thereof to the secretary of state. Adding Thomas M. Gunter's majority in this county of Scott to that shown, we have his total majority, 1,342.

As to the counties of Boone and Sarber, there is no disagreement between the parties. Both admit that the votes of these counties should be retained.

The majority of the committee, while they do count for Mr. Wilshire the votes returned for "W. W. Wilshire," decline to count for Mr. Gunter the votes returned for "T. M. Gunter" from the precincts of Ashley and Bayou Meto, in Pulaski County, amounting in the aggregate to 353, which exceeds the majority found by them for Mr. Wilshire. The undersigned see no excuse for this discrimination. They believe that all of these votes should be counted. In none of the cases cited was any point ever made, considered, or decided which would justify the committee or House in the application of different rules to these votes on the ground that all of Mr. Wilshire's votes were returned for "W. W. Wilshire," while only a part of Mr. Gunter's were returned for "T. M. Gunter," or on any other ground.

The votes established by the documentary proofs cited in the foregoing pages show the following results:

| | W. W. Wilshire. | Thomas M. Gunter. |
|---|---|---|
| Proclamation and certificate in part | 12,644 | 11,499 |
| Montgomery County | ..... | 407 |
| Newton County | ..... | 184 |
| Pulaski County, Maumelle | ..... | 56 |
| 1st ward, Little Rock | ..... | 287 |
| Cypress | ..... | 50 |
| Ashley | ..... | 277 |
| Bayou Meto | ..... | 76 |
| Caroline | ..... | 506 |
| Campbell | ..... | 33 |
| Prairie | 12 | 138 |
| Scott County | 116 | 574 |
| Total | 12,772 | 14,087 |
| Majority for Thomas M. Gunter | | 1,315 |

We recommend the adoption of the following resolution:

*Resolved*, That the contested-election case from the third district of Arkansas be recommitted to the Committee on Elections, with instructions to report upon the merits of the case who is entitled to represent said district in this House.

L. Q. C. LAMAR,
R. M. SPEER,
EDWARD CROSSLAND.

## SLOAN vs. RAWLS.—FIRST CONGRESSIONAL DISTRICT OF GEORGIA.

Charges of fraudulent and illegal practices, threatening and overawing election officers, and intimidation of voters.

Frauds may be of such a character as to taint the entire poll; in which case only votes subsequently proved can be counted.

Majority and minority reports submitted.

Minority report rejected March 24, 1874—Yeas, —; nays, —; not voting, —.

The House adopted the majority report March 24, 1874—Yeas, 135; nays, 74; not voting, 81.

Andrew Sloan sworn in.

Authorities referred to: Irwin's Revised Code; Mis. Doc. No. 20, pages 155, 174-'5, 278, 239 to 251, 284; Dawson's Compilation, page 156; Howard *vs.* Cooper, Bartlett, 275; Washburn *vs.* Voorhees; Code of Georgia, sec. 1362.

February 27, 1874.—Mr. Hyde, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the contested election case of Andrew Sloan* vs. *Morgan Rawls, from the first Congressional district of Georgia, respectfully submit the following report:*

The election here contested was held on the 5th day of November, 1872, in the first Congressional district of the State of Georgia, composed of nineteen counties, as follows:

Appling, Bryan, Burke, Bullock, Charlton, Camden, Chatham, Clinch, Echols, Effingham, Emanuel, Glinn, Liberty, McIntosh, Pierce, Scriven, Tatnall, Ware, and Wayne.

The following sections of the laws of Georgia are quoted as applicable to the questions which arise in this case.—(*Irwin's Revised Code.*)

*Section* 1312. Such election shall be held at the court-houses of the respective counties, and, if no court-house, at some place within the limits of the county-site, and at the several election precincts thereof, if any, established or to be established. Said precincts must not exceed one in each militia district. Such precincts are established, changed, or abolished by the justices of the inferior court, descriptions of which must be entered on their minutes at the time.

*Section* 1314. If by 10 o'clock a. m. on the day of the election there is no proper officer present to hold the election, or there is one and he refuses, three freeholders may superintend the election, and shall administer the oath required to each other, which shall be of the same effect as if taken by a qualified officer.

*Section* 1315. (*Subdivision* 6.) When the votes are all counted out there must be a certificate, signed by all the superintendents, stating the number of votes each person voted for received; and each list of voters and tally-sheet must have placed thereon the signature of the superintendents.

(*Subdivision* 7.) The superintendents of the precincts must send their certificates, and all other papers of the election, including the ballots, under the seal, to the county-site, for consolidation, in charge of one of their number, which must be delivered there by twelve (12) o'clock m. the next day. Such person is allowed two dollars, to be paid out of the county treasury for such service.

(*Subdivision* 8.) The superintendents to consolidate the vote of the county must consist of all those who officiated at the county-site, or a majority of them, and at least one from each precinct. They shall make and subscribe two certificates, stating the whole number of votes each person received in the county; one of them, together with one list of voters and one tally-sheet from each place of holding the election, shall be sealed up and without delay mailed to the governor; the other, with like accompaniments, shall be directed to the clerk of the superior court of the county, and by him deposited in his office. Each of said returns must contain copies of the original oaths taken by the superintendents at the court-house and precincts.

(*Subdivision* 9.) The ballots shall not be examined by the superintendents or the bystanders, but shall be carefully sealed in a strong envelope (the superintendents writing their names across the seal) and delivered to the clerk of the superior court, by whom they shall be kept unopened and unaltered for sixty days, if the next superior court sits in that time; if not, till after said term, after which time, if there is not a contest begun about said election, the said ballots shall be destroyed without opening or examining the same, or permitting others to do so. And if the clerk shall violate or permit others to violate this section, he and the person violating shall be subject to be indicted and fined not less than one hundred nor more than five hundred dollars. Such clerks shall deliver said list of voters to their respective grand juries on the first day of the next term of the superior court, and, on failure to do so, are liable to a fine of not less than one hundred dollars on being indicted and convicted thereof.

*Section* 1317. If said superintendents do not deliver said lists and accompaniments to said clerks within three days from the day of the election they are liable to indictment, and, on conviction, shall be fined not less than fifty nor more than five hundred dollars. Any superintendent of an election failing to discharge any duty required of him by law is liable to a like proceeding and penalty.

The notice of contest contains thirty-seven specifications, consisting mainly of charges of fraudulent and illegal conduct on the part of the sitting member and his partisans, in secretly abolishing voting precincts on the eve of the election; in causing four voting-places to be established in one precinct in the city of Savannah, when the law only permitted one; in fraudulently rejecting and throwing out the entire vote of several precincts; in illegally and fraudulently tampering with ballot-boxes and returns; in preventing voters from going to the polls by acts of fraud and deception; in taking out of the ballot-boxes votes cast for the contestant, and supplying their place with votes bearing the name of the contestee; in fraudulently arresting a United States supervisor of the election upon a false charge, upon the morning of the election, and holding him under arrest, for the purpose of preventing him from discharging his duties as such supervisor; in threatening and overawing the supervisors of the election in various precincts, so as to prevent them from discharging their duties, and in acts of fraud and violence by which the officers of the election were prevented, in some precincts, from opening the polls, and in others voters were intimidated and driven away.

The answer of the sitting member denies the allegations of the notice, and charges the contestant and his friends with using undue means and fraud to obtain votes; with having received illegal votes, and with acts of fraud, intimidation, and violence.

Such of these charges and counter-charges as are, in the opinion of the committee, sustained by the evidence will be more particularly considered in connection with the proofs by which they are supported.

The following is the official vote by counties regularly returned to the office of the secretary of state, prior to the issuance of the certificate of election to Mr. Rawls, on the 26th of November, 1872, and upon which the certificate and proclamation of the governor were based:

*Official Vote by Counties.*

| Counties. | Votes for Andrew Sloan. | Voters for Morgan Rawls. |
|---|---|---|
| Appling | 9 | 153 |
| Bryan | 272 | 200 |
| Bullock | 000 | 568 |
| Burke | 1,093 | 1,051 |
| Camden | 414 | 184 |
| Charlton | 147 | 50 |
| Chatham | 2,428 | 3,161 |
| Clinch | 28 | 291 |
| Effingham | 157 | 272 |
| Emanuel | 70 | 348 |
| Echols | 75 | 47 |
| Glynn | 566 | 243 |
| Liberty | 603 | 238 |
| McIntosh | 544 | 127 |
| Pierce | 147 | 180 |
| Scriven | 205 | 554 |
| Tatnall | 46 | 376 |
| Ware | 116 | 133 |
| Wayne | 59 | 143 |
| Total | 6,979 | 8,319 |

The following abstract and certificate by the secretary of state contains all the returns of said election made to and on file in his office.

It is as made by the secretary of state with only the addition of the total as cast up by the committee.

This abstract, which is printed on page 278, Mis. Doc. No. 20, is as follows:

SECRETARY OF STATE'S OFFICE,
*Atlanta, Ga., January* 9, 1873.

The following is an abstract of the votes cast at the election held on the 5th day of November, 1872, in the first Congressional district of Georgia, for a member of the Forty-third Congress, and returned to this office, up to that date, as appears from the returns from the several counties comprising said district, and which are on file in this office; and further, that only two persons were voted for, to wit, Morgan Rawls and Andrew Sloan.

| Counties. | Sloan. | Rawls. |
|---|---|---|
| Appling | 9 | 153 |
| Bryan | 272 | 200 |
| Burke | 1,093 | 1,051 |
| Managers' error in counting against Sloan in addition | 38 | ..... |
| Bullock | None | 568 |
| Charlton | 147 | 50 |
| Camden | 414 | 184 |
| Camden, Bailey's precinct | 94 | 17 |
| Chatham City | 2,428 | 3,161 |
| Chatham County precincts, rejected by managers (1,239) | 1,239 | 2 |
| Clinch | 28 | 291 |
| Echols | 75 | 47 |
| Effingham | 157 | 272 |
| Emanuel | 70 | 348 |
| Glynn | 566 | 243 |
| Liberty | 603 | 238 |
| McIntosh | 544 | 127 |
| Pierce | 147 | 180 |
| Scriven | 205 | 554 |
| Tatnall | 46 | 376 |
| Ware | 116 | 133 |
| Wayne | 59 | 143 |
| Total | 8,350 | 8,338 |

Witness my hand and seal of office.
[SEAL.]

DAVID G. COTTING, *Secretary of State.*

From this abstract it appears that, allowing the correctness of all the returns made to the secretary of state, Mr. Sloan would be elected by a majority of twelve votes.

It will be perceived that this majority of twelve votes for Mr. Sloan is obtained by adding to the regular official returns first herein referred to, and upon which the governor's proclamation was based, the following returns which were not included in the former, viz:

| | Sloan. | Rawls. |
|---|---|---|
| 1st. Managers' error in consolidating the vote of Burke County | 38 | ..... |
| 2d. Bailey's precinct, Camden County | 94 | 17 |
| 3d. Three county precincts of Chatham County rejected by managers | 1,239 | 2 |
| Total | 1,371 | 19 |

The committee are fully convinced that the additional votes embraced in the last preceding table should be counted, for the following reasons:

1st. In regard to the managers' error against Mr. Sloan of thirty-eight votes in consolidating the votes of Burke County. Mr. Sloan charges, in the 33d specification of his notice, that the managers made a mistake of thirty-eight votes against him in adding up the precinct returns of said county.

That this is true is proved by said returns, which are printed on pages 239 to 251 (Mis. Doc. No. 20).

These precinct returns, as regularly made to the managers, and upon which they based their consolidated return, show each party to this contest to have received the following votes in said county of Burke:

| | Sloan. | Rawls. |
|---|---|---|
| Liberty Hill precinct | 35 | 105 |
| Seventieth district, G. M. precinct | ..... | 13 |
| Seventy-second district | ..... | 9 |
| Sixty-fourth district | ..... | 62 |
| Alexander | 80 | 83 |
| Gordon's precinct | 156 | 146 |
| Bark Camp Cross-Roads | 38 | 69 |
| Tarver's shop, sixty-fifth district | 12 | 65 |
| Waynesborough | 220 | 475 |
| Seventy-first district | 590 | 24 |
| Total | 1,131 | 1,051 |

In the consolidated returns for said county, as returned to the secretary of state and printed on page 238 (Mis. Doc. No. 20), the total vote of the candidates for Congress is stated as follows:

| | |
|---|---|
| Morgan Rawls | 1,051 |
| Andrew Sloan | 1,093 |

This statement of Sloan's vote gives him just thirty-eight votes less than he is entitled to by the precinct returns, and it is apparent that his vote in Bark Camp Cross-Roads was not counted, and as no reason is given why it was not counted, and as the managers certify that they have consolidated the returns of all the precincts in the county, it is fair to presume it was omitted by mistake.

This is also made apparent by Exhibit W of the consolidated returns of Burke County, printed on page 183, from which these thirty-eight votes for Mr. Sloan are omitted.

Various frauds and irregularities are alleged by the contestant, in relation to the vote and returns of this county, which need not be noticed in this connection.

2d. Bailey's precinct in Camden County. In this precinct Mr. Sloan received 94 votes, and Mr. Rawls 17 votes.

There is no objection made to the legality of the election in this pre-

cinct, and the only reason known to the committee why the return was not included in the consolidated returns for the county is that these consolidated returns were made on the 6th day of November, and this return was not received by the ordinary until the morning of the 7th of November. This is stated in the certificate of the ordinary, on page 49 (Mis. Doc. No. 20), and the vote and return of this precinct is also proven by the testimony of Joseph Shepherd (page 47).

3d. The three country precincts of Chatham County rejected by the managers and not included in the regular consolidated returns of that county.

The following are the names of the precincts and the votes for Representative in Congress cast at each, as appears from the return on page 155 (Mis. Doc. 20).

| | Sloan. | Rawls. |
|---|---|---|
| Isle of Hope | 253 | ..... |
| Chapman's House | 600 | 2 |
| Cherokee Hill | 386 | ..... |
| Total | 1,239 | 2 |

The returns from these precincts were consolidated and filed in the office of the secretary of state, as appears by his certificate on pages 277 and 278.

There is no evidence tending to show that the election at these precincts were not fairly and legally conducted, and the returns made and forwarded to the county managers within the time and in the manner required by the laws of Georgia; but, on the contrary, the testimony of King S. Thomas, page 55, Avery Smith, page 57, and James Porter, page 58, together with the exhibits of the names of the voters referred to in their testimony, and which are printed on pages 148 to 174, inclusive, established the fact, in the opinion of the committee, that the election at these precincts was fairly and legally conducted; but it is claimed by the sitting member that these voting-precincts had no legal existence, and he gives that in his brief as the reason for the rejection of the returns from them. He says:

> The consolidators of the Chatham election refused to receive and count these votes, because they considered that there were no such precincts existing by law in Chatham County, &c.

The question of law at issue in regard to the legality of these voting-precincts is simple, and may be briefly stated.

It is admitted on both sides that the ordinary of the county was authorized by the laws of Georgia to establish or abolish voting-precincts by an order entered of record in his court.

And it is also admitted that these precincts were established on the 22d day of October, 1868, by the ordinary of Chatham County sitting as a court of ordinary by an order duly entered of record.

A certified copy of said order is printed on pages 174 and 175 (Mis. Doc. No. 20).

Said order is as follows:

> Court of ordinary, Chatham County, sitting for county purposes.
>
> OCTOBER 22, 1868.
>
> It being necessary that election precincts should be established in the county in order to facilitate the election to be held on the 3d day of November next, it is therefore ordered that election precincts be, and they are hereby, established at Cherokee Hill, in the eighth militia district, embracing the whole of said district, at Chapman's house, in the seventh militia district, embracing the whole of said district, and on the Isle of Hope, embracing the whole of the fifth and sixth militia districts.
>
> HENRY S. WETMORE,
> *Ordinary C. C.*

In the judgment of the committee, no order abolishing these precincts had been made until about a month after the election in November, 1872.

But it is claimed by the sitting member that the order of October 22, 1868, by which these precincts were established, applied only to the election for the year 1868, and that it does, by its terms, limit their establishment to that election.

And that appears to be the reason for the rejection of the returns from these precincts by the managers who consolidated the returns of Chatham County.

The committee are clearly of the opinion that such was not the effect of said order; that the words "it being necessary that election precincts should be established in the county in order to facilitate the election to be held on the 3d day of November next," only expressed a reason for action at that time, but did not in any manner limit the terms of the order, and much less did they have the effect of abolishing those precincts on the 4th day of November following.

It is proper to state in this connection that the sitting member produces the testimony of the ordinary (see page 284, Mis. Doc. No. 20), in which he states:

*It was my intention when I established these* precincts to have them in force only for the election referred to.

But certainly such evidence cannot be admitted to contradict or change the records of courts.

Judgments and orders of courts of record would be of little value as evidence, or for any purpose, if they could be contradicted, changed, and set aside by the testimony of the judge taken five years after the record was made.

The action of this same ordinary in abolishing these precincts in December, 1872, about a month after the election, shows how little confidence he has in his own opinion thus solemnly expressed.

It also appears by the evidence that United States supervisors of the election at all of these three precincts were appointed on November 1, 1872, by the judge of the district court of the United States for the southern district of Georgia. (See page 179, Mis. Doc. No. 20.)

And that all of said supervisors acted, except the Democratic supervisor appointed for the Isle of Hope precinct.

The act of the legislature of Georgia to provide for an election, approved October 3, 1870, has been cited as abolishing these precincts.

The first section of that act provides—

That an election shall be held in this State, beginning on the 20th day of December, 1870, and ending on the 22d of said month of December, 1870, for members of Congress to serve during the unexpired term of the Forty-first Congress, &c.

The third section provides—

SEC. 3. That said election shall be managed and superintended at the several court-houses at the county seat, and at any election precinct that may exist or be established in any incorporated and organized city or town by managers chosen as follows.

This was a special act applicable to that particular election and to no other; and there is no provision by which any election precinct is established, abolished, or changed except for this election.

This construction the committee believe is in accordance with the universal understanding in regard to this law among the people of Georgia.

The committee are therefore clearly of the opinion that the returns from these precincts should be counted.

## LAWTONVILLE.

The vote of the precinct of Lawtonville, in Burke County, was not consolidated with the returns from that county, and is not included in any of the tables heretofore given.

It appears by the testimony of Stanley Young, page 123, one of the supervisors of the election, that the election was conducted honorably and fairly, and that it resulted in Mr. Sloan receiving 189, and Rawls 113.

The only difficulty was in counting the votes and making the returns.

The managers of the election were all Democrats.

Mr. Young further states that after counting a part of the votes the managers refused to make out and forward the return for the precinct; that the rest of the votes were counted by one of the managers and the clerk, and that both the clerk and manager admitted that the vote as above stated was correct.

And that John H. Perkins, one of the managers, afterward made out the vote as stated and gave it to deponent Young, and he sent it to the secretary of state.

The correctness of this vote is corroborated by the report of the supervisors of that precinct to the chief supervisor of elections for the southern district of Georgia, printed on pages 130 and 131.

These facts are further corroborated by the testimony of John H. Perkins, one of the managers of the election, printed on pages 88 and 89.

The committee, therefore, consider the evidence ample in regard to the vote of this precinct, and that it should be counted as follows:

| | |
|---|---|
| For Sloan | 189 |
| For Rawls | 113 |

## LIBERTY HILL.

The official return from Liberty Hill precinct, Burke County (page 239), gives the vote as follows:

| | |
|---|---|
| Morgan Rawls | 105 |
| Andrew Sloan | 35 |

Mr. Sloan alleges fraud in this return; but the evidence relied upon to prove his allegation consists entirely in a discrepancy between the vote returned for him and the number proved to have been cast.

The committee are of the opinion that this does not constitute such proof of fraud as to require them to reject the return, but that they might properly add to it such votes as the contestant proves were cast for him above the number returned.

In the case of Washburn *vs.* Voorhees, reported February 19, 1866, this identical question arose in relation to Jefferson Township, and the report in that case, which was adopted by the House, did not reject, but corrected, the return by giving the contestant the benefit of the votes proved in excess of those counted in the return.

The evidence relied upon to prove the number of votes actually cast for Mr. Sloan at this precinct is as follows:

First. A list of Republicans who voted at this precinct on the day in question. This list contains 67 names, and is printed on page 129.

Second. The deposition of Edmund Harper (page 100), who was questioned, and answered as follows:

Question. Have you any knowledge of the number of Republican votes actually put in the box that day?—Answer. I saw and counted seventy-four that were given out to men who took them and went to the box to deposit them.

Third. The depositions of sixty Republican voters, who swear that they voted at this precinct at the election in question, receiving most, if not all, of the ballots from the vice-president or secretary of the Grant and Wilson Club, and that they all voted the Republican ticket; and all but five swear that they intended to vote or did vote for Mr. Sloan.

As these voters were unable to read or write, the evidence is as conclusive as could be obtained under the circumstances; and the committee are of the opinion that at least a part of these votes should, if it were necessary to decide the contest, be counted for Mr. Sloan. But, in view of the length of the testimony, the few votes in issue in this precinct, and the further fact that, in the judgment of the committee, they could in no view of the case change the result, the committee have thought it unnecessary to make a count of them.

### THE 259TH DISTRICT IN SCRIVEN COUNTY.

The return from this precinct was rejected by the managers who consolidated the returns of the county on account of non-compliance with the law. The managers did not subscribe to the oath. The vote returned was—

| | |
|---|---|
| Rawls | 31 |
| Sloan | 4 |

Considering the fact that these votes were rejected by the county managers on account of the irregularity of the return, that the copy of the precinct return as furnished in the evidence is defective, and the irregular manner in which it was transmitted to the secretary of state, and there being no testimony in proof of the actual number of votes or of any vote cast for either Mr. Sloan or Mr. Rawls at this precinct, the committee are of the opinion that the strict rules of law would require the rejection of the entire return; but inasmuch as there is some evidence of the correctness of the vote, and no evidence of fraud, the committee recommend that it be counted.

### JEFFERSONTON, CAMDEN COUNTY.

According to the returns from this precinct, Mr. Sloan received 205 votes and Mr. Rawls none. Mr. Rawls claims that it was not a legal voting-precinct, and that the vote, which was included by the managers in the consolidated returns from Camden County, should be rejected.

It is conceded that on the 3d day of November, 1868, the ordinary of Camden County made an order of record in his court by which he attempted to abolish this precinct. A certified copy of this order is printed on page 42, Mis. Doc. No. 20, part 2d.

But it is evident from the authorities cited by the sitting member himself that this order has not been regarded, and that the people have continued since to vote at Jeffersonton precinct.

The order of the ordinary by which he attempted to abolish this precinct in 1868 was illegal and void for the reason that at that time Jeffersonton was the county-seat and contained the court-house of Camden County, and by the laws of Georgia then in force the court-house in each county was designated as a voting-precinct, and was not subject to be changed or abolished by any authority except the legislature of the State. (Sec. 1312, Code.)

There is also another reason which, in the judgment of the committee, is conclusive why the precinct of Jeffersonton, or Jefferson (for it

appears to have been designated by both of these names), could not be abolished by the ordinary.

It was designated and made a voting-district by an act of the legislature of Georgia, approved December 21, 1821. (Dawson's Compilation, page 156.)

The court-house of Camden County was afterward at Jeffersonton, and, by the code before referred to, the court-house in each county was made a voting-place.

Prior to the election of 1872, the county seat, as well as the place of holding courts for that county, was removed from Jeffersonton, which, perhaps, might be fairly considered as a removal of the court-house. But this act made no mention of election districts.

The rule in the construction of statutes is well settled that when both can stand together, without conflict, the latter act will not be made to repeal the former by construction.

The vote of this precinct was received and counted by the county managers, and the committee believe that it was in all respects legal, and that there is no reason for rejecting it.

BULLOCK COUNTY.

The notice of the contestant (specifications 9 to 20 inclusive) makes various charges of unfairness, fraud, and illegality, in regard to the management of the election in Bullock County and the consolidation of the returns; and claims that the result in this county is so obscured by fraud that the truth cannot be obtained, and that the whole return should be rejected.

In the case of Howard *vs.* Cooper (Bartlett, 275,) the committee laid down the following rule in relation to cases of fraud:

> When the result in any precinct has been shown to be so tainted with fraud that the truth cannot be deducible therefrom, then it should never be permitted to form a part of the canvass. The precedents, as well as the evident requirements of truth, not only sanction, but call for the rejection of the entire poll, when stamped with the characteristics here shown.

This same doctrine has been repeatedly laid down by committees, and has received the sanction of the House. (See Washburn *vs.* Voorhees, Contested-Election Cases, 1865 to 1871, and cases there cited.)

The laws of Georgia, heretofore cited, require that—

> The superintendents, to consolidate the vote of the county, must consist of all those who officiated at the county-seat, or a majority of them, and at least one from each precinct.

The consolidated return for Bullock County (see page 257) has the names of six managers signed to the return and certificate, which states that—

> We do certify that we have this day met and consolidated the returns of the other voting-places with the court-house, and that the following is the result, &c.

But the testimony of these men, whose names are signed to the consolidated return (see pages 72–79), discloses the fact that not one of them ever signed or ever saw the consolidated return, or had anything whatever to do with the consolidation of the returns from that county.

Not one of them is able to tell anything about the making up of the consolidated returns; and two of them, DeLoach and Proctor, decline to answer questions on the ground that the answers might tend to criminate them. This consolidated return was made up by one C. A. Sorrier (Mis. Doc. 20, part 2, page 2), who was not a manager, and had no legal connection whatever with the election, and had no right to handle any of the papers.

Yet, strange as it may seem, all of the precinct returns were handed

over to him as soon as they reached the court-house, and continued in his exclusive possession for many days.

He swears that he made up the consolidated return without the assistance or supervision of anybody, and signed the names of the managers to it. That consolidated return is dated on the 5th day of November, and yet it was not mailed to the Executive Department until the 19th of November, as appears by the testimony of the secretary of state, who examined the post-mark (page 139).

And instead of being sent by mail from Bullock County, it was, on the 11th or 12th of November (see page 51), in the hands of one Sims, who delivered it to some party in Savannah.

It appears to have been held back until the returns from all the other counties had been received.

Another most significant fact in this connection is the failure to turn over the ballots, returns, tally-sheets, and lists of voters, to the clerk of the superior court, as required by the laws of Georgia, before referred to.

The clerk of the superior court testifies that "*nothing outside the ballot-box*" was deposited in his office (page 72).

It would be difficult to conceive of a more reckless and absolute disregard of every provision which the law makes for securing the purity of elections and the correctness of returns.

And when we consider all these facts, that the precinct returns, ballots, poll-lists, and tally-sheets were all, immediately after the election and before they had been examined by anybody, turned over to a man who was not sworn and who had no legal connection whatever with the election, and no right to the possession of any of the papers; that he, and he alone, made up the consolidated return without the assistance of a single man whose duty it was, by law, to do it, and signed the names of the managers to it; that he unlawfully kept all of these papers in his possession for a long time, not even sending off the consolidated return within the time or in the manner required by law; that he never deposited with the clerk of the superior court the ballots, tally-sheets, lists of voters or returns, as required by law; that during all this time, having every paper and ballot pertaining to the election in the entire county in his possession, he had every opportunity to change them in any manner he pleased; that there are no papers in existence except those thus unlawfully held in his possession, by which the correctness of the return can be tested; and finally, that no other evidence of the actual number of votes cast for either candidate has been produced, the committee has very little confidence in the correctness of any of the returns from this county.

But desiring in every case to avoid the rejection of votes or returns that the evidence will in anywise justify the committee in counting, they have concluded in this case to count the precinct returns of Bullock County, covered as they are with suspicion, rather than reject so many votes for Mr. Rawls, a large part of which, at least, were undoubtedly fairly cast for him.

These precinct returns are printed on pages 32 to 38 (Mis. Doc. No. 20, part 2), and show the following vote:

| *Precincts.* | *Sloan.* | *Rawls.* |
|---|---|---|
| Statesborough | 000 | 138 |
| Briar Patch | 000 | 93 |
| Sink Hole | 000 | 113 |
| Forty-eighth district | 000 | 83 |
| Forty-sixth district | 000 | 66 |
| | 000 | 493 |

The pretended precinct return, printed on pages 38 and 39, is not counted by the committee, because it does not appear in what precinct or county the election was held.

The consolidated return from this county must be absolutely rejected for the reasons before stated. That return is included in the votes before given, and in it Mr. Rawls is credited with 568 votes, from which, deducting 493, the number shown by the precinct returns, the difference is 75, which should be deducted from his vote.

CITY OF SAVANNAH.

The contestant claims (see seventh specification of notice) that the election in the city of Savannah was not held in accordance with law, and that the entire vote and return are illegal and should be rejected.

By section 1312 of the code of Georgia, heretofore cited, it is provided that there shall not be exceeding one voting-precinct in each militia district.

And it is claimed by the contestant that, in violation of this provision, four voting-places were established in different parts of the court-house in Savannah.

The evidence is positive upon this point and is undisputed; four ballot-boxes, at four different voting-places in the court-house, were used, and were presided over by four distinct sets of managers and clerks. They were so disconnected that no man could superintend the voting at more than one box at the same time. Two of these voting-places were from the streets on opposite sides of the court-house, and two were from the main passage-way through its center. (See plan, page 279.)

The act of Congress approved February 28, 1871, provides for the appointment in certain cases of two United States supervisors for each election precinct, to superintend the election.

Under that act and the act amendatory thereto, two supervisors were appointed to superintend the election at the court-house precinct in the city of Savannah.

Section 5 of that act requires the supervisors to "attend at all times and places for holding elections" and "for counting the votes," to challenge any vote offered by any person whose legal qualifications the supervisors, or either of them, shall doubt; to be and remain where the ballot-boxes are kept at all times after the polls are open until each and every vote cast at said time and place shall be counted," &c.

Section 6 of the same act requires the supervisors to—

> Take and occupy and remain in such position or positions from time to time, whether before or behind the ballot-boxes, as will in their judgment best enable them or him to see each person offering himself for registration, or offering to vote, and as will best conduce to their or his scrutinizing the manner in which the registration or voting is being conducted; and at the closing of the polls for the reception of votes, they are, and each of them is, hereby required to place themselves or himself in such position in relation to the ballot-boxes for the purpose of engaging in the work of canvassing the ballots in said boxes contained as will enable them or him fully to perform the duties, &c.

It is, therefore, evident that, if four ballot-boxes, separated as these were, can be used at one precinct, it will be impossible for the United States supervisors to perform the duties required of them by the act of Congress above referred to, and that the act can anywhere, by the managers of elections, be annulled and disregarded.

In further illustration of the truth of this, the committee respectfully refer to the report of S. D. Dickson, one of the United States supervisors of the election held at the court-house in Savannah, which is printed on page 7 (Mis. Doc. No. 20, part 3), as follows:

*Report of S. D. Dickson, supervisor.*

SAVANNAH, GA., *November* 8, 1872.

SIR: I have the honor to report as supervisor of election for Presidential electors, and member of Congress to represent the first Congressional district of Georgia in the Forty-third Congress of the United States, held at the court-house, in the city of Savannah, county of Chatham, on the 5th day of November, A. D. 1872.

I was present at the precinct at 6½ a. m. I found four boxes or precincts established, which were all used separately. I took my position at box located on the York street side of the court-house, and, with the exception of fifteen minutes (when you relieved me), supervised it until the closing of the polls; then I had the box under my supervision until all the ballots were counted. I examined and counted every ballot, and report the action of the managers correct in counting. Annexed please find the result.

During the voting there was unreasonable delay while challenging, and several voters were refused to be sworn by the managers.

I found it physically impossible to supervise more than the one poll at which I was stationed, at which at least three-fourths of the colored voters were challenged. Consequently I omit reporting upon the three boxes used at the other parts of the court-house.

I am, very respectfully, &c.,

S. D. DICKSON,
*United States Supervisor of Election.*

Col. A. W. STONE,
*Chief Supervisor of Elections for the Southern district of Georgia;*

P. S.—I have the names of several voters who were rejected by the managers. If they were legally entitled to vote, they should be entitled to redress.

Result:

| | |
|---|---|
| Grant electors | 657 |
| Greeley electors | 176 |
| Sloan (Congress) | 673 |
| Rawls (Congress) | 167 |

S. D. D.

If four ballot-boxes in four separate places can be legally used in one voting-precinct, so can forty or one hundred in as many different places in the precinct, and any attempt at supervision would be impossible.

And it is also evident that the use of four ballot-boxes, in four separate places, and with four complete sets of election officers, in what could legally be only one voting-precinct, was in violation of the spirit and intention, as well as the letter, of the law of Georgia.

The committee cannot refrain from noticing the attempt which was made by the authorities of Chatham County to set aside all the other voting-precincts, and thereby compel the voters of the entire county either to come to the court-house or to lose the opportunity of voting.

Such a law practically disfranchises large numbers of voters, and ought to be the subject of additional legislation, so far as the election of members of Congress is concerned.

As the rejection of the vote of the city of Savannah would not change the result in this case, the committee have not deemed it necessary to pass upon its legality, and they therefore count it as it was officially returned.

There are some other points of minor importance, but no one or all of them, upon the evidence as produced, could possibly change the result of the election, and the committee have therefore thought it unnecessary to go into all of these points in detail.

RECAPITULATION.

The following is the result in figures as found by the committee:

| | Sloan. | Rawls. |
|---|---|---|
| Total of returns as given in first table | 6,979 | 8,319 |
| 1. Bark Camp Cross-Roads omitted by managers in consolidating vote of Burke County | 38 | ..... |
| 2. Bailey's precinct, Camden County | 94 | 17 |
| 3. Isle of Hope, Chapman's house, and Cherokee Hill, Chatham County | 1,239 | 2 |
| 4. Lawtonville, Burke County | 189 | 113 |
| 5. District 259, Screven County | 4 | 31 |
| | 8,543 | 8,482 |
| Deduct from Mr. Rawls in Bullock County | | 75 |
| Totals | 8,543 | 8,407 |
| Deduct Rawls's vote from Sloan's | 8,543 / 8,407 | |
| Majority for Sloan | | 136 |

The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That Hon. Morgan Rawls is not entitled to a seat in this House as a Representative from the first Congressional district of Georgia in the Forty-third Congress.

*Resolved*, That Hon. Andrew Sloan is entitled to a seat in this House as a Representative from the first Congressional district of Georgia in the Forty-third Congress.

MINORITY REPORT.

Mr. Speer submitted the following as the views of the minority:

The undersigned, dissenting from the conclusions of the majority of the Committee on Elections in the case of Andrew Sloan *vs.* Morgan Rawls, from the first Congressional district of Georgia, respectfully submit their views to the House.

The following is the canvass upon which was based the certificate of election issued by the governor of the State to the sitting member:

| Counties. | Votes for Andrew Sloan. | Votes for Morgan Rawls. |
|---|---|---|
| Appling | 9 | 153 |
| Bryan | 272 | 200 |
| Bullock | ..... | 568 |
| Burke | 1,093 | 1,051 |
| Camden | 414 | 184 |
| Charlton | 147 | 50 |
| Chatham | 2,428 | 3,161 |
| Clinch | 28 | 291 |
| Effingham | 157 | 272 |
| Emanuel | 70 | 348 |
| Echols | 75 | 47 |
| Glynn | 556 | 243 |
| Liberty | 603 | 238 |
| Macintosh | 544 | 127 |
| Pierce | 147 | 180 |
| Scriven | 205 | 554 |
| Tatnall | 46 | 376 |
| Ware | 116 | 133 |
| Wayne | 59 | 143 |
| Total | 6,979 | 8,319 |

Majority for Rawls, 1,340.

The contestant asks the House to subtract from this canvass all of the contestee's votes (105) returned from the sixty-eighth district of Burke County, and to increase contestant's from 35 to 60; to add to the contestant's vote 200 ballots for Mars Court Ground, Scriven County, where no election was held; to add to the contestant's vote 50 ballots for Horse Stamp precinct, Camden County, where no election was held; to add to the canvass the vote of Lawtonville precinct, Burke County, for Sloan 189, Rawls 113; to subtract from the canvass the vote of Waynesborough precinct, Burke County, for Rawls 475, Sloan 220; to subtract from the canvass the entire vote of Bullock County, for Rawls 568; to add to the canvass the vote of Bailey's Mills precinct, Camden County, Sloan 94, Rawls 17; to add 38 to the contestant's vote, by the correction of an alleged error in Burke County; to subtract from the canvass the entire vote of the city of Savannah, for Rawls 3,161, Sloan 2,428; to add to the canvass the votes of the three Chatham County precincts, Isle of Hope, Chapman's House, and Cherokee Hill, for Sloan 1,237, Rawls 2; and to subtract from the canvass the vote of Ware County, for Rawls 133, Sloan 116.

The sitting member asks the House to subtract from the canvass the vote of Jeffersonton precinct, Camden County, for Sloan 205, Rawls none; to subtract from the canvass the vote of Riceborough precinct, Liberty County, for Sloan 339, Rawls 3; to add to the canvass the vote of the two hundred and fifty-ninth district, Scriven County, for Rawls 31, Sloan 4; and to subtract from the canvass the vote of Scotland precinct, Emanuel County, for Sloan 19, Rawls 10.

### 1. LIBERTY HILL (SIXTY-EIGHTH DISTRICT), BURKE COUNTY.

The official returns of this precinct show 105 votes for Mr. Rawls and 35 for Mr. Sloan. The contestant undertakes to impeach these returns as fraudulent, and insists that they shall not be received as evidence of the number of votes cast for the respective candidates, but that only such votes shall be counted as are proven by the depositions. And he claims that while the depositions show that he himself received 60 votes, they do not show that Mr. Rawls received any.

No attempt has been made by the contestant to impeach these returns, otherwise than by testimony offered to show that he actually received 60 votes, while the returns only show 35 votes in his favor. He asks that this testimony may subserve the twofold purpose of impeaching the returns and establishing his own vote.

The undersigned dissent from the conclusions of the majority of the committee respecting this precinct, and respectfully invite the attention of the House to the character of the testimony on which these conclusions are based. Sixty witnesses were examined on this subject by the contestant. Forty-three testified separately. Seventeen subscribed to a joint affidavit.

Smith Mobly (p. 91). He does not testify that he voted for the contestant.

Q. What are your reasons for supposing that you voted that ticket?—A. Because it favors the ticket that I voted.

Berry Brigham (p. 91). He testifies that he voted for Grant, but does not say that he voted for Sloan.

Cross-Q. If you are not sure of the picture and cannot read and write, what reasons have you for supposing it is the same ticket?—A. Because it favors it. The letters look like it. I can spell a little.

### Kinney Anderson (p. 92). Direct examination.

Q. Did you know that Andrew Sloan and Morgan Rawls were running against each other for Congress?—A. I did not understand it in that way.

### David Godby (p. 93). He seems to think he voted for two candidates for Congress.

Cross-Q. Who else did you vote for for Congress at that time?
(Objected to as immaterial.)
A. I disremember the name.

### Wilson Brigham (p. 93). Redirect examination.

Q. Is this the ticket you voted (Exhibit No. 2)?—A. It looks like it, but I think the ticket I voted was cut in two.
Q. Were both pieces put in?—A. I think the lower part *was cut off about here* (*witness pointed to Sloan's name*), but I think both pieces were put in.

### John Brigham (p. 94).

Cross-Q. Do you know whose names were on the ticket at the time you voted?—A. I think I do. Grant and Wilson's names were on these.
Cross-Q. Did you know at that time that Sloan's name was on it?—A. *I did not.*
Cross-Q. How do you know it now?--A. I know by what others said—from what our president said. By our president I mean the president of our club, Cage Griffin.

### Sumter Blocker (p. 97).

Q. Who told you that you voted for Andrew Sloan?—A. Some of the men that looked at my ticket.
Cross-Q. Do you know of your own knowledge, or just from what they told you?—A. From what they told me. I did not know of my own knowledge.

### Moses Young (p. 97).

Redirect:

Q. Do you know enough to tell whether that is the ticket that you voted or not? (Exhibit No. 2 shown to witness.)—A. As far as I can make out, that is nearly pretty much the ticket.

### Peregrin Reason (p. 101). Direct examination.

Q. Did you vote for Morgan Rawls or Andrew Sloan?—A. I could not tell you that. I voted the Republican ticket entire.

### Willis Williams (p. 106). Direct examination.

Q. Did you not vote for somebody for Congress?—A. Not *that I know of*, sir.
Q. Look at that. (Exhibit No. 2 handed to witness.) Is that the ticket you voted?—A. I can't read, sir; but it did not look like this. It *did not look white like this paper* (pointing to Exhibit No. 2.)
Q. Did you vote for either Andrew Sloan or Morgan Rawls at that election?—A. If I did, I did not understand it. I just voted the paper they gave me, and that was all.

### Cuyler Lawrence (p. 107). He does not testify that he voted at this precinct at all. But he does testify on cross-examination as follows:

Cross-Q. How do you know you voted for Sloan and Grant and Wilson?—A. I heard the paper read.
Q. When you heard it read, what did they read? Who did they say was candidate for Congress?—A. I don't remember *whether they said it was Grant, Wilson, or Sloan. I am certain that they called all three of these names.*

### Allen Rayals (p. 108). He testifies that he did not vote at this precinct.

### Samuel Lewis (p. 109).

Cross-Q. Look at this and say if it is the same ticket you voted on that day (Exhibit No. 2)?—A. Yes, sir; it looks like the ticket, but I am not certain of it.

### Jefferson Aron (p. 109).

Cross-Q. Did Asa Clark tell you that day that it was Mr. Sloan you was voting for; did he call Mr. Sloan's name?—A. Yes, sir.
Cross-Q. What did you vote for him for; what office was he running for?—A. I thought it was for Representative, or something of that sort.

Zed Sapp (p. III). He seems to have supposed that he voted for two candidates for Congress.

In his direct examination he testifies as follows:

Q. For whom did you vote for a member of Congress on that day?—A. I voted for Sloan and somebody else. I forget the names.

Jeffrey Hilton (p. 113), direct examination. He testifies that he voted for "Rawls and Colfax."

I voted the ticket they gave me; I am certain I voted for Grant, Sloan, and Rawls, if the ticket was right.

Cross-Q. You went there to vote for Rawls and you voted for him?—A. I went there to vote for Grant and Colfax, and for Sloan and Rawls, and voted for them.

James Dixon (p. 115). He testifies that the ticket which he voted had writing on it as well as printing. Whereas the contestant's ticket had, in fact, no writing, but only printing on it.

Redirect:

Q. Are you positive that the ticket you voted on that day had writing on it like the writing on Exhibit No. 2?—A. Yes, sir. I don't know what it was, but it had writing on it.

Q. Are you not mistaken, and was not the ticket you voted like this now presented, without any writing whatever on it?

(Question objected to on the ground that contestant has no right to impeach the testimony of his own witness.)

Henry Chandler (p. 116).

Cross-Q. What office was Mr. Sloan running for?—A. I don't know what office he was running for.

Cross-Q. Was he running for President, legislature, or constable?—A. He was running at President's election, that's for President.

Benjamin Oliver (p. 118).

Cross-examined:

Cross-Q. How do you know you voted for Mr. Sloan?—A. I went by the order of the president of our club.

Richard Kelly (p. 119).

Direct examination:

Q. For whom did you vote for Congress?—A. For Mr. Sloan, and Morgan Rawls, and Mr. Grant. Mr. Sloan was for Congress.

Cross-examined:

Cross-Q. How do you know you voted for Sloan and Morgan Rawls and Grant for Congress?—A. Asa Clark read out these men's names.

This disposes of 20 of the 43 witnesses who were separately examined. Not more than six of the residue of the forty-three *knew* or *pretended* to *know* for whom they voted. The others had been *told* that they voted for the contestant. To save time, seventeen more of the same kind were, by stipulation, thrown into a single affidavit, which is printed on pages 120 and 121 of the large pamphlet, in the following words:

UNITED STATES OF AMERICA,
*Southern District of Georgia, County of Burke, ss:*

We, the undersigned, each for himself, swears that on the 5th day of November last he resided in the county of Burke, in the sixty-eighth militia district, and voted at Liberty Hill, in the sixty-eighth militia district, for Presidential electors and a member of the Forty-third Congress, and that we each received our tickets at the hands of Isaac Boy, the vice-president of the Grant and Wilson club of the said sixty-eighth district, except Isaac Griffin, who received his ticket on that day at the hands of Asa Clark, the secretary of said Grant and Wilson club, and that we each for ourselves voted the ticket thus given us on the 5th day of November last, by the said Boy and Clark, by depositing the same in the ballot-box at said Liberty Hill, over which Washington Moffley and two other election managers presided; that we belong to the Republican party, and did on that day, November 5; that we intended

to vote the Republican ticket, and for Andrew Sloan for member of the Forty-third Congress from the first Congressional district of Georgia.

1. GEORGE his + mark. JONES.
2. WILLIAM his + mark. DICKSON.
3. ELIAS his + mark. ELLISON.
4. ALLEN his + mark. BURKE.
5. WILLIAM his + mark. VERDERY.
6. ROBERT his + mark. MORRIS.
7. MARCH his + mark. LOVETT.
8. ISAAC his + mark. GRIFFEN.
9. ISAIAH his + mark. CLARKE.
10. JOHNSON his + mark. WATERS.
11. EDWARD his + mark. CLARKE.
12. CYRUS his + mark. PRESCOTT.
13. CÆSAR his + mark. WAYNE.
14. PRICE his + mark. ELLISON.
15. JIM his + mark. ANDERSON.
16. GEORGE his + mark. NESMITH.
17. DAVID his + mark. GRIFFIN.

The foregoing affidavit subscribed and sworn to before me this 22d day of February A. D. 1873.

ISAAC BECKETT,
*Register in Bankruptcy, First Congressional District of Georgia.*

In order to save time, it was stipulated in writing by the parties to the contest—

That these electors are considered, on an average, as reliable as those heretofore examined at this place, and that they and the electors examined at this place on yesterday, the 21st instant, are all colored men, and that the men included in the succeeding affidavit cannot read and write.

This *average of reliability* which destroys twenty of the forty-three witnesses who testified separately, also destroys eight of those who signed the affidavit. Nine more are to be rejected because not named in the notice to take depositions. The result is, therefore, that, of the sixty votes claimed, only twenty-three are proven, even by hearsay;

thirty-seven are not proven at all. And not more than nine of all the sixty testify of their own knowledge. The testimony, then, instead of impeaching the returns, actually fails to show as large a vote for the contestant as the returns themselves.

If the official returns of this precinct had been first impeached by overwhelming proof of fraud on the part of the officers, or otherwise, and the parties had become thereby entitled to prove their respective votes, still would such absurd testimony as this be unworthy of a moment's consideration as proof of those votes. But to permit such stuff first to impeach and destroy the official returns, and then to establish the vote of the contestant, would be a gross outrage.

The undersigned were amazed at the effrontery of the contestant's demand. They are still more amazed at the action of the majority of the committee in response to this demand, by which action all but nine of the sixty votes are counted for the contestant, these nine votes being excluded for the sole reason that the witnesses were not named in the notice to take depositions. But they cannot believe that the House will perpetrate a wrong so flagrant as either to set aside the official returns of this precinct or to count fifty-one of these votes for the contestant.

2. MARS COURT-GROUND, SCRIVEN COUNTY.

The contestant alleges that one William Mars, a Democrat, declined to act as an election officer at this precinct, and that no election was held. He claims that for this reason he is entitled to 200 votes, which were not in fact cast, but which he thinks would have been cast, if Mars had officiated in fulfillment of his promise to one Brown. It was competent for any three freeholders, out of the contestant's 200 alleged supporters, to avail themselves of their right, expressly secured by the statutes, and hold the election themselves. Mr. Mars seems to have had as perfect a right to decline the duty as they had. Inasmuch as none of these partisans of the contestant held an election in fact, and none of his emissaries were sent out from Savannah for that purpose, this novel claim must be rejected.

3. HORSE-STAMP PRECINCT, CAMDEN COUNTY.

The contestant alleges that David C. Scarlett, a Democrat, declined to act as a precinct officer at that place, and that no election was, in fact, held. He claims that he is entitled for this reason to 50 votes, which were never cast, but he thinks would have been cast if Scarlett had officiated. Three other freeholders were present, but none of them acted as officers, and no election was held. This claim, like the preceding, is preposterous.

4. LAWTONVILLE (SIXTY-FIRST DISTRICT), BURKE COUNTY.

The contestant alleges that the following vote was cast at this precinct:

| | |
|---|---|
| Andrew Sloan | 189 |
| Morgan Rawls | 113 |
| Majority for Sloan | 76 |

And he claims that this vote, which was not returned or canvassed, should be counted by the House. The undersigned cannot approve this claim, for the following reasons: No return of the vote was ever

made. There is no testimony as to the actual vote, except that of one Stanley Young, the United States supervisor, whose credibility is destroyed by the testimony of H. L. Perkins and William Warnock, managers of the election, showing the lawless and partisan conduct of Young, and the strong Democratic majority of the precinct. The following is the testimony:

H. L. PERKINS sworn. (P. 8, small pamphlet.)

Question. Where do you reside?—Answer. In the sixty-first district of Burke County, Georgia.

Q. Did you attend an election or any voting-place in the aforesaid county on the 5th day of November, 1872, when Presidential electors, and Morgan Rawls and Andrew Sloan, candidates for Congress, were voted for?—A. I attended the election. I do not know whether it was on the 5th day of November or not. I think it was, though. I attended the election at Lawtonville, in the sixty-first district.

Q. Who were the managers at that place of the election?—A. John H. Perkins, William Warnock, and myself.

Q. Did you make up a return of said election, certify to the same, and send it forward for consolidation with the other precinct returns of Burke County?—A. I did not.

Q. Did the managers at the aforesaid precinct make up, certify to, and send forward a return of said election?—A. We did not.

(Counsel for contestant objects on the ground that the witness cannot know whether other managers besides himself made up, certified, and sent up such return.)

Q. Why did not the managers make up, certify to, and send forward a return of that election?—A. The reason I did not sign it was because the ballot-boxes were emptied during my absence. The same reasons were assigned by William Warnock for not so doing.

Q. When was the ballot-box emptied, and where were the purported ballots when you returned, that caused you to refuse to make up, certify to, and send forward a return?—A. The ballot-boxes were emptied on the floor of the room, and when I saw the purported ballots they were lying loose on the floor. The voting was done in the same room I saw the ballots laying.

Q. Did you authorize any person to empty said ballot-box and turn the ballots out loosely upon the floor?—A. I did not.

Q. Who was in the room and near the ballots lying loose on the floor when you returned?—A. Dr. Young and Judge Carswell, who were the supervisors; George Warnock, who was a clerk, and John H. Perkins, who was a manager, were around the purported ballots lying on the floor.

Q. What did Dr. Young have to do with said election?—A. He was supervisor for the Republican party.

Q. Did Dr. Young handle the ballot-box, or the loose ballots on the floor?—A. He did handle the loose ballots; he said he was assorting them.

Q. Was Dr. Young handling these ballots when you returned and found said ballots loose on the floor?—A. He was.

Q. Were there not many loose ballots lying around the room where the said election was held, that had not been polled?—A. There were some. I do not know how many.

Q. Did any party attempt, on or after the day of said election, to induce you to make up and certify to a return of said election?—A. They did.

Q. Please state the name of said party.—A. Dr. Young.

Q. What did Dr. Young say to you?

(Counsel for contestant objects to witness stating anything that occurred between himself and Dr. Young unless contestant were present at the time.)

A. Dr. Young sent for me to come to see him. I came. He said it would be much better for me to sign up those papers as a manager of said election, as it would save me a great deal of trouble, for by signing them and getting John Perkins to sign them, would put an end to any future trouble. That Sloan would go to Congress anyhow. He said that I would have to go to Savannah, and be put to a great deal of trouble and expense in February, at the next sitting of the United States court. He also used the argument, to induce me to sign said papers, that Sloan was a superior man to Rawls, and that Sloan would go to Congress any way, and it would be best to sign up without any trouble; that he (Young) would get Judge Carswell to sign up also; and that if John Perkins and myself would sign, it would not make any difference whether William Warnock did or not. He said that it would be to his interest for me to sign the papers.

Q. Were any of the managers of the aforesaid precinct election arrested? If so, when, and by whom?—A. Wm. Warnock was arrested by Deputy Marshal Smith. It was after the election in November, I think.

Q. How long after said election was it when Warnock was arrested?—A. Not more than three weeks, I think, after said election.

Q. Had Warnock been arrested when Young endeavored to get you to certify to this precinct election?—A. He had.

Q. Who represented Mr. Andrew Sloan here in this neighborhood since the election in endeavoring to get you to sign and certify to the aforesaid election return, and getting up witnesses to be used in this contest?—A. Dr. Young has been representing Mr. Sloan by trying to get me to sign those papers. And I hear that he has been getting up witnesses for Sloan among the negroes at night at their club meetings, and other places, I supposed.

(Counsel for contestant objects to witness stating what he has heard.)

Q. Are you well acquainted with Dr. Young, in this neighborhood, and with the people of this neighborhood?

(Counsel for contestant objects upon the ground that the matter inquired about has no connection with this case.)

A. I have known Dr. Young intimately for fourteen years. I was raised here and I know all the people in this neighborhood.

Q. What political party received the majority of the votes polled at the Lawtonville precinct, in the sixty-first district, in Burke County, when the aforesaid election was held, at the October election just preceding the election held for Presidential electors and Congressmen?—A. The Democratic party—I mean the candidates of the Democratic party—received the majority of votes.

Q. How has the majority of the votes polled at said precinct been in the last several elections politically?—A. Democratic.

(Counsel for contestant objects to the last two questions and answers upon the grounds that there is better evidence of the facts stated. The election returns themselves, of the several elections named, constitute the proper evidence on this point.)

Q. Was there a large number of Democratic electors present and voted at the election at the aforesaid precinct on the 5th day of November, 1872?—A. There was a large number of men there who voted. They belonged to the Democratic party.

Q. Who was known as the Democratic candidate for Congress at that election?—A. Morgan Rawls.

WILLIAM WARNOCK. (P. 18, small pamphlet.)

Question. Why did you not make up, certify to, and send forward to the court-house, for consolidation with the other precinct returns of Burke County, the ballots polled at that precinct, or the result of the election at said precinct?—Answer. Because in the evening after the voting was closed we had a recess; two of the managers left the room, leaving the boxes in the charge of the third manager until we returned. When I returned I found the ballots out of the boxes and on the floor, in such a condition that I could not certify to the number or for whom they were cast, the boxes having been opened and the ballots taken out in the absence of H. L. Perkins and myself, two of the managers.

Q. Were there any loose election-tickets lying around that had not been polled by any elector at that election?—A. There were a few; I don't think very many.

Q. Did you make an effort, when you returned and found the ballot-boxes emptied on the floor, to verify the list of voters; and what did that effort show?—A. I did not. Mr. John H. Perkins, one of the managers, and Dr. Young, one of the supervisors, said they could not make them agree; that there were seven ballots short, or over, I disremember which.

Q. How long were you and H. L. Perkins absent from the room during this recess, when these ballot-boxes were emptied upon the floor?—A. I think it was about fifteen or twenty minutes; it might have been longer, or not so long; it was a short time.

Q. Before leaving the room, in attempting to tally any of the ballots, did you call out to the clerks, Wheeler and Wilson, and Grover and Baker, for the purpose of having tallies made thereof?—A. I did not.

Q. Did you upon leaving the room remark that you would not return, or say that you were tired and were going home, and did not care to count out Republican tickets?—A. I did not.

Q. Did H. L. Perkins make any such remark?—A. Not in my hearing. We left the room together.

Q. Did you return to the room for the purpose of completing said election; and would you have carried out that intention had it not been for finding the ballot-boxes emptied and the ballots scattered on the floor?—A. I did return for that purpose, and would have done it, had it not been for that cause.

Q. Did you ever state to Dr. Young that a report he made of said election as supervisor was correct?—A. I did not, and did not know that he had made one, only from hearsay.

When we consider the conduct of this man Young, who had no legal right to handle the ballots at all, in emptying the tickets from the box on the floor, in the absence of two of the managers, mingling them with tickets that had never been voted; his attempt to procure a return by officers who could not honestly make it, through threats and intimidation; his declaration that it would be to his advantage to have the vote as he counted it returned; and when it is shown that the tally-lists did not agree, and that at the election in the previous month for governor,

this precinct gave Smith, Democrat, 139, and Walker, Republican, 41 votes, and that for the last several years it had uniformly given a Democratic majority, we cannot hesitate to reject the pretended return made by Young, whose character and conduct, as well as his avowed interest in the success of the contestant, render his testimony unworthy of belief. To substitute for the requirements of the law the testimony of such a witness, given under such circumstances, seems to the undersigned an insult to the intelligence of the House. It will be a sad day for the purity of elections and the honor of our country when the rights of a Representative in Congress shall be dependent upon one so regardless of even the forms of the law, and so insensible to the obligations of his oath.

### 5. WAYNESBOROUGH PRECINCT, BURKE COUNTY.

The contestant's objections to the vote of this precinct do not seem to the undersigned to be well taken. One of these objections is that John Mack, a colored man, who resided in and had been appointed United States supervisor for *another precinct* (viz, Knight's), was arrested on the day of the election for beating one Joe Smith. Inasmuch as Mack had nothing whatever to do with the Waynesborough precinct, his arrest, whether merited or not, cannot invalidate the election.

Another objection is, that whereas the official returns show a majority for Rawls, one Jesse Wimberly testifies that "about five and one-half Republican tickets to one and one-half Democratic tickets were voted at Waynesborough," and John Warren and John Johnson testify that the Republicans cast the largest number of votes at this precinct. The following is the testimony of these witnesses:

Jesse Wimberly (p. 87).

Q. Have you been familiar with elections at Waynesborough for some years past, and have you found yourself able, from observation, to form some judgment of the state of the vote there prior to the count?—A. I have.

Q. Were you a close observer of the election there that day?—A. I was.

Q. From such opportunities as you had of judging, what is your judgment of the respective proportion of Democratic and Republican tickets delivered by voters to the managers there at that election?—A. About five and one-half Republican, including Sloan, to about one and one-half Democratic, including Rawls.

John Warren (p. 87).

Q. Have you taken an interest at Waynesborough at previous elections?—A. I have.

Q. Did you observe this election closely?—A. I did.

Q. From the number of tickets you gave out, and from what you observed of that election, for which ticket, Republican or Democratic, were the larger number of ballots cast there that day, in your judgment?—A. Republican ticket.

John Johnson (p. 88).

Q. Have you taken an interest in previous elections in Waynesborough?—A. I have.

Q. From your observation on that day, what is your judgment as to which ticket, the Democratic or Republican, had the greater number of votes given at Waynesborough that day?—A. Republican.

This testimony does not seem to the undersigned to be entitled to much greater weight, as against official returns, than that of the 60 Liberty Hill witnesses already considered.

Another objection is, that although the voting was done *at* the court-house, that is to say, in the court-house yard, yet it was not done *in* the particular building called the court-house, but was done in the office of the clerk of the superior court, near the other building. This objection is obviously frivolous.

### 6. BULLOCK COUNTY.

The contestant denied the irregularity of the county canvass or consolidation for Bullock County; but inasmuch as the sitting member does not rely upon this county canvass or consolidation, but upon the precinct returns themselves, and these precinct returns, establishing the vote of the county beyond question, are presented on pages 32 to 39 of the small pamphlet, duly authenticated by the secretary of state, and wholly unimpeached, the undersigned do not see that it is material to inquire into the regularity of the canvass or consolidation. At the same time they find no such irregularity as would, under the statutes of Georgia, invalidate this canvass, even if it were the only evidence of the vote before the House. There is no testimony tending to show that the precinct officers did not sign the precinct returns. No attempt was made to show this, although an attempt was made to show that they did not make a consolidation at the county site. The contestant complained that the ordinary, Mr. Sorrier, after considerable delay, sent these returns to the secretary of state, by way of Savannah. But however this may be, it would not affect the case; for his testimony, on pages 2, 3, 4, and 5 of the small pamphlet, shows how the delay occurred, and why the consolidation was sent by way of Savannah; so that even if there was proof that the precinct returns accompanied the consolidation to the office of the secretary of state, that would not impeach them under the evidence here.

The undersigned cannot concur in the conclusion of the majority of the committee, to reject the returns of the forty-fifth district of Bullock County, which gives Mr. Rawls 75 majority, and at the same time accept the returns of one of the precincts of Camden County giving Mr. Sloan a majority of 205, and also the returns of Bryan County, giving Mr. Sloan a majority of 72. The forty-fifth district returns are shown on pages 38 and 39 of pamphlet, part 2; the Camden returns on pages 40 and 41 of the same pamphlet; and the Bryan returns on 256 and 257 of the large pamphlet. The ground of the rejection of the forty-fifth district returns is, that the place of the election is not indicated in the returns, but the Camden return does not show the place of the election, nor does the Bryan return show either the place or the time. The following is the return of the forty-fifth district of Bullock County:

STATE OF GEORGIA, ——— *County:*

All and each of us do swear that we will faithfully superintend this day's election: that we are justices of the peace, ordinary or freeholders (as the case may be), of this county; that we will make a just and true return thereof, and not knowingly permit any one to vote unless we believe he is entitled to do so according to the laws of this State, nor knowingly prohibit any one from voting who is entitled by law; and will not divulge for whom any vote was cast, unless called on under the law to do so: So help me God.

JOHN G. JONES,
HIRAM FRANKLIN,
JOHN GREEN, Ex., *J. P.*,
*Superintendents.*

Sworn to and subscribed before me this 5th day of November, 1872.

JOHN GREEN, Ex.,
*Justice of the Peace.*

STATE OF GEORGIA, ——— *County:*

By virtue of the statute in such cases made and provided, an election was held on the 5th day of November; 1872, at , in the county of , for a member of Congress to represent the Congressional district in the Forty-third Congress of the United States, and for electors for President and Vice-President of the United States; and we, the

superintendents, do hereby certify that, upon counting out the votes polled, the following is the result:

| Names of candidates for electors. | No. votes polled. |
|---|---|
| William T. Wofford received | 75 |
| Washington Poe received | 75 |
| Henry L. Benning received | 75 |
| Julian Hartridge received | 75 |
| H. G. Turner | 75 |
| Robert N. Ely received | 75 |
| W. L. Hudson received | 75 |
| J. M. Pace received | 75 |
| Henry R. Casey received | 75 |
| J. N. Dorsey received | 75 |
| E. D. Graham received | 75 |

| Names of candidates for Forty-third Congress. | No. of votes polled. |
|---|---|
| Morgan Rawls received | 75 |
| Andrew Sloan received | 00 |

Which will fully appear by reference to the inclosed list of voters and tally-sheet.

Given under our hands and official signatures this 5th day of November, 1872.

JOHN G. JONES,
HIRAM FRANKLIN,
JOHN GREEN, Ex., *J.P.*,
*Superintendents.*

## The following is the Camden County precinct return:

GEORGIA, *Camden County:*

All and each of us do swear that we will faithfully superintend this day's election; that we are freeholders; that we will make a just and true return thereof, and not knowingly permit any one to vote unless we believe he is entitled to do so according to the laws of this State, nor knowingly prohibit any one from voting who is entitled by law: and will not divulge for whom any vote was cast, unless called on under the law to do so; so help me God.

MONROE WILSON, *F. H.*,
PETER his + mark. SYBBEL, *F. H.*,
DICK his + mark. DRUMMOND, *F. H.*,
*Superintendents.*

Sworn to and subscribed before me this 5th day of November, 1872,

——— ———,
*Justice of the Peace.*

Oath of superintendents of election.

STATE OF GEORGIA, ——— *County:*

By virtue of the statute in such cases made and provided, an election was held on the 5th day of November, 1872, at , in the county of for a member of Congress to represent the Congressional district in the Forty-third Congress of the United States; and we, the superintendents, do hereby certify that, upon counting out the votes polled, the following is the result:

FOR PRESIDENTIAL ELECTORS.

Amos T. Akerman, v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v v—205.

| | | |
|---|---|---|
| Benjamin Conley, at large | | 205 |
| 1st dist., | Amherst W. Stone | 205 |
| 2d " | Joel Johnson | 205 |
| 3d " | W. B. Jones | 205 |
| 4th " | W. W. Merrell | 205 |
| 5th " | Joel R. Griffin | 205 |
| 6th " | John F. Shine | 205 |
| 7th " | C. D. Forsyth | 205 |
| 8th " | Geo. S. Fisher | 205 |
| 9th " | C. A. Ellington | 205 |

| Names of candidates for Forty-third Congress. | Number of votes polled. |
|---|---|
| Andrew Sloan received | 205 |

MONROE WILSON,
his
PETER + SIBBEL,
mark.
his
DICK + DRUMMOND,
mark.
*Superintendents*

OFFICE OF SECRETARY OF STATE,
*Atlanta, Georgia, December 27*, 1873.

I hereby certify that the above and foregoing one page, with names of electors thereto attached, is a true and correct copy of the original return on file, and that the tally-sheet and list of voters is also on file in this office.

Given under my official signature and seal.

N. C. BARNETT,
*Secretary of State.*

The following is the Bryan return:

*Names of candidates for President.*

| | |
|---|---|
| For the State at large: | |
| William Wofford | 200 |
| Washington Poe | 200 |
| Henry L. Benning | 200 |
| Julian Hartridge | 200 |
| First district, H. G. Turner | 200 |
| Second district, Robert N. Ely | 200 |
| Third district, W. J. Hudson | 200 |
| Fourth district, J. M. Pace | 200 |
| Fifth district, Henry R. Casey | 200 |
| Sixth district, J. N. Dorsey | 200 |
| Seventh district, E. D. Graham | 200 |
| For Congress, Morgan Rawls | 200 |
| Sloan | 272 |
| Amos T. Akerman | 272 |
| Benjamin Conly, at large | 272 |
| First district, Amherst W. Stone | 272 |
| Second district, Joel Johnson. | |
| Third district, W. B. Jones. | |
| Fourth district, W. W. Merrill. | |
| Fifth district, Joel R. Griffin. | |
| Sixth district, John F. Shine. | |
| Seventh district, C. D. Forsyth. | |
| Eighth district, George S. Fisher. | |
| Ninth district, C. A. Ellington. | |

We, as superintendents of this election, consolidating, find, upon counting the votes, that the above is a true, and just as reported to us by (the) the superintendents of said election, was held in conformity to the statute of said State.

Given under our hands and seals this Nov. 6, 1872.

A. J. BUTLER.
JOHN L. HAZEMAN.
his
ISAAC + RUSH,
mark.
*Trufuller.*

The injustice of this discrimination in favor of the contestant is apparent upon the face of the returns; but, while there is nothing in the proofs to show either the time of the Bryan County election or the place of the consolidation, or the place of the Camden election, yet the place of the election of the "45th district" of Bullock County is shown on page 74, of the large pamphlet, by John Green, one of the officers of the election, who was called as a witness by the contestant himself, and testified as follows:

JOHN GREEN sworn.

Question. Did you act as manager of the election in Bullock County, held on the 5th of November last, for Presidential electors and member of the Forty-third Congress; and, if

so, at what precinct?—Answer. I did, at the forty-fifth militia district, known as the Club-House, in the capacity of notary public and ex-officio justice of the peace. Hiram Franklin and John Jones presided with me.

Also by John G. Jones, a manager, on page 76 of the large pamphlet, as follows:

JOHN G. JONES sworn.

Question. Did you, as one of the managers, bring to the court-house the returns of the election held at the forty-fifth district precinct in this county on the 5th day of November last for Presidential electors and member of Congress; and, if so, what did you do with them?—Answer. As one of the managers at that precinct, I brought the returns to the court-house. I returned them to B. J. Sims the morning after the election. I know nothing more about them.

Q. Do you know anything of the consolidation of the county vote?—A. I do not.

Cross-examined:

Q. Did you present these returns to Mr. Sims in the condition they were in when they left the precinct?—A. I did.

JOHN G. JONES.

Sworn and subscribed before me February 14, 1873.
[SEAL.]

JOHN J. NEWTON,
*Notary Public.*

Certainly no technical ground for this discrimination in favor of the contestant can be found in the pleadings of the parties; for if it is true that the sitting member did not, in his answer to the notice of contest, raise this objection to the Bryan return, it is also true that the contestant did not, in his notice of contest, make this objection to the "45th district" returns; but it is also true that the sitting member *did* in the fifth specification of his answer insist upon this objection to the Camden return.

### 7. BAILEY'S MILLS PRECINCT, CAMDEN COUNTY.

The vote of this precinct was—

| | |
|---|---|
| Sloan | 94 |
| Rawls | 17 |
| Majority for Sloan | 77 |

This vote was not consolidated with the returns of Camden County, because it was not returned within the time prescribed by law. But we think it should be counted.

### 8. ERROR OF THIRTY-EIGHT VOTES IN CANVASS OF BURKE COUNTY.

There seems to have been an error in consolidating the returns of this county. The vote, as returned, is: Sloan, 1,093; Rawls, 1,051. Sloan's true vote, as appears from the precinct returns, is 1,131. We correct this error and give him 38 votes.

### 9. CITY OF SAVANNAH.

The contestant asks that the entire poll of the city of Savannah, amounting to 5,589 votes, be rejected because four ballot-boxes were used and more than three superintendents officiated at the voting-place in that city.

The undersigned are of the opinion htat this request ought not to be granted by the House. The court-house at Savannah is, like every other court-house in the State, made a voting-place by the statute of Georgia. The number of ballot-boxes to be used is not prescribed by

law. Four ballot-boxes had been used at this voting-place for many years, as is shown by the following uncontradicted testimony.

B. F. Sheftall, one of the managers, testifies as follows, on page 22:

Question. Had there been any election held at the court-house since the four ballot-boxes were established, before the election held on 5th day of November, 1872? If so, how many, and for what purposes were they held?—Answer. Yes; there have been elections held at the four ballot-boxes since they were established, and before the election held on the 5th November, 1872. There were two elections held before the 5th day of November, 1872, for governor, members of the legislature, and county officers. All the elections, except city elections, have been held at the court-house for the last three or four years.

S. Elsinger, also a manager, testifies, on page 26, as follows:

Cross-question. Were there ever any elections held before the said election in the court-house, when four ballot-boxes were used; and, if so, what elections?—Answer. Yes; there were elections held before, when four ballot-boxes were used. They were State elections and county elections, and city elections also, where three ballot-boxes were used.

M. T. Quinan, a manager, testifies, on page 29:

Cross-question. Had there been any elections held at the court-house, at which four ballot-boxes were used, prior to the election of the 5th of November, 1872? If so, how many, and what elections?—Answer. At all elections held since 1868 four ballot-boxes have been used. There were two elections for governor and members of the legislature; one election for a Congressman and city officers.

The use of four ballot-boxes was an absolute necessity, for the statute of Georgia provides only one voting-place in the entire city of Savannah; nor had any additional voting place been established by the ordinary of the county; and unless several boxes had been used at that place, between 5,000 and 6,000 ballots must have been deposited by voters of the city in one box before 3 o'clock p. m.; which, of course, would have been an impossibility. The contestant's proposition, therefore, disfranchises a large proportion of the voters of his district, whichever horn of the dilemma they may see fit to take. If they *do not* all vote in one box they are to be distranchised; but if they *attempt to vote* in one box large numbers of them are virtually disfranchised, because they cannot all vote in a single ballot-box. There is an additional reason why the voters of Savannah should not be disfranchised on account of these ballot-boxes. It is found in section 1362 of the Code of Georgia:

1362. Election not void by reason of formal defects. *No election shall be defeated* for non-compliance with the requirements of the law, if held at the proper time and place by persons qualified to hold them, *if it is not shown that by that non-compliance the result is different from what it would have been had there been a proper compliance.*

No attempt has been made to show anything of this kind in the case of the Savannah vote.

The contestant asserted that the number of ballots cast for Presidential electors at Savannah exceeded by 22 the number of names recorded on the poll-list, and insisted that this was sufficient evidence of fraud or irregularity on the part of the sitting member's supporters to affect the validity of the entire vote of Savannah. But the undersigned are unable to discover any evidence of fraud in this circumstance. If there was any fraud here, certainly there seems to be nothing to warrant a presumption that it was perpetrated by the sitting member any more than by the contestant; for, while the evidence discloses no fraud on the part of the supporters of the sitting member, the following extracts will show that the contestant's supporters were by no means wholly free from fault.

A. A. Davis testifies respecting this election, on page 293, as follows:

Answer. I do know of parties being arrested for illegal voting or voting more than once. There were two that I know of. I arrested Adam McIntosh because I saw him vote twice,

and a boy by the name of Brown. On my way carrying Adam McIntosh to the guard-house he stated to me that he had voted four times. This man Brown that I arrested, I saw him vote twice myself. On the way going to the guard-house he stated to me that he had voted three times, and after I got him into the office at the guard-house he repeated the words in the presence of Lieutenant Riley and the turnkey that he had voted three times. I made several arrests that day under the direction of Mr. Sheftall. I can't say how many were arrested. I think there were seventeen or eighteen. I cannot speak positively on this fact.

Q. To what race and political party did the parties arrested for illegal voting at said election belong?

(Counsel for contestant objects, unless it be asked which one of the contestants in this case the parties voted for, the politics of voters having nothing to do with this issue.)

A. The parties arrested were black, and I believed them to be Republicans. I speak of those two parties that I arrested myself. All that I arrested that day were negroes.

Q. To what race did all the parties arrested on that day belong?—A. They were all negroes; or that is what I call them.

Q. Do you know any facts going to show for whom any of the above parties voted at said election?—A. To the best of my knowledge and belief Adam McIntosh did vote the Republican ticket twice, and Brown did vote it twice. The tickets were of different color from ours and a very large ticket. I did not see the inside of the ticket. When I say "ours" I mean the Democratic ticket.

James McCauley testifies, on page 302, as follows:

Answer. I arrested two myself for illegal voting, and others were arrested by other officers about thirty (30) in all, I think.

Q. To what race and political party did the persons belong who were arrested for illegal voting at said election?—A. The two parties that I arrested were not residents of the county; they were colored men, and belonged to the Republican party. All the men arrested were colored men, and, to the best of my knowledge, they all belonged to the Republican party.

Q. What knowledge have you that the two men whom you arrested were not residents of Chatham County?—A. Because about two weeks before that they were brought down by United States marshals as witnessesin a case fromWilkinson County. I arrested them for voting twice, which I saw myself, and trying to vote a third time. They had Republican tickets on them, in their hands, and some in their pockets. One negro was named Harry Lawther, the other Israel Mitchell. Mitchell was convicted and sent to the penitentiary, and Lawther escaped from the officer that was taking him for examination or to give bonds, I forget which. They were identified by other parties as having voted four times. I mean in court. There were also four or five others convicted for same offense, and sentenced to the penitentiary. There would have been more convicted, as the officers that arrested them were afraid to appear against them, for fear of arrest themselves by the United States authorities.

The contestant is a resident of Savannah; was at this election, and voted at one of these boxes. No complaint was made by him until he found the majority was against him.

But the explanation of the circumstance that the ballots exceed in number the names on the poll-list, is probably found on the poll-list printed on page 221 of the large pamphlet. There are more numbers than names on this poll-list. On all the other poll-lists the numbers and names end together. It is probable that the last names were accidentally omitted by a clerk, or a certifying officer. But if it had been true that the number of ballots cast for Presidential electors actually exceeded the number of names recorded on the poll-lists, that would not have been ground for rejecting an entire return. It is often provided by law, that in such cases the election-officers shall, before counting, take from the box and destroy enough ballots to make the numbers of votes and voters even.

Again, the contestant objects to the Savannah election because more than three managers officiated. But the number of managers is not limited any more than is the number of ballot-boxes. There must be three managers, but the statute does not say there shall not be more. This is the law:

1282. Superintendents of elections of members of the legislature. The persons qualified to hold such elections are ordinaries, justices of the peace, and freeholders. There must be three superintendents, and one must either be an ordinary or a justice of the peace, except in a certain contingency hereinafter to be set forth.

1287. Three freeholders may superintend election. If, by ten o'clock a. m., on the day of

election, there is no proper officer present to hold the election, or there is one and he refuses, three freeholders may superintend the election, and shall administer the oath required to each other, which shall be of the same effect as if taken by a qualified officer.

Obviously there was the same imperative necessity for additional managers, as for additional boxes. All the electors of Savannah were obliged to vote at the court-house, and unless more than one ballot-box had been used, the election could not have been held at all. These boxes could not have been properly superintended by three managers. The boxes were arranged in a straight line in one hall, and at intervals of from ten to sixteen feet, with no partition or wall or screen between them. It seems to have been the best and fairest possible arrangement to enable the citizens to vote, and the managers and supervisors to perform the duties prescribed by law.

It was suggested that the use of additional ballot-boxes and the employment of additional superintendents seemed to be a device to evade the acts of Congress known as the "enforcement acts"; but the proof shows that this practice obtained in Savannah many years before the passage of the enforcement acts; and besides, it is manifestly no part of the object or effect of those acts to prescribe the number of precinct officers or ballot boxes.

### 10. CHEROKEE HILL, CHAPMAN'S HOUSE, AND ISLE OF HOPE PRECINCTS, CHATHAM COUNTY.

The vote of the three precincts at Cherokee Hill, Chapman's House, and Isle of Hope, in Chatham County, was excluded from the canvass or consolidation on which the certificate of the governor was predicated. The undersigned cannot concur in the conclusion of a majority of the committee to count this vote. These precincts had never been used before, except in the single case of the election of 1868.

In 1870 there was an election in Georgia for members of Congress, of the State legislature, and of all county officers. In January, 1872, there was an election for governor; and in October, 1872, the month previous to the election now in question, there was an election for governor, members of the legislature, and county officers. *Upon neither of these several occasions was there an election held at any of these precincts, nor was there even a pretense by any party or person in the entire State of Georgia that they were legal places for holding elections.* That they had been established only for the election of 1868, was during all this time the unchallenged opinion of the authority that established them and of the electors themselves. And that this was the opinion of the contestant's friends, and doubtless of himself, appears from the testimony of H. S. Wetmore, the ordinary who established them, as follows, page 285:

Question. Were you appealed to or requested, on or before the 5th day of November, 1872, to establish election precincts outside the limits of the city of Savannah, in Chatham County; and if so, by whom, and to what political party did those appealing or requesting belong?

(Counsel for contestant objects to the question, on the ground that it is not in rebuttal nor in support of any allegation contained in contestee's allegations.)

Answer. The day preceding the election in question I was asked by Mr. J. E. Bryant, whom I understood to be a committee for this purpose, to establish the same election precincts in Chatham County as were established for the Presidential election of 1868. Hearsay makes Mr. J. E. Bryant a Republican.

The statute of Georgia confers upon the ordinary full and exclusive power to establish, change, and abolish election precincts. There seems to be nothing in the law which prevents him from combining, in a sin-

gle order of his court, a provision for the establishment, and a provision for the subsequent abolishment of a precinct. No form of words is prescribed or required for his order. Any phraseology which will convey his meaning would seem to be sufficient. Hence it is as competent and proper for the ordinary to provide in a single order that a new precinct shall be used on a future day and then be abolished, as to provide in one order that it shall be so used on a future day, and then in a subsequent order to provide for its abolishment. The only question is one of intent. These precincts were not established until October 22, 1868, and then, as the undersigned think, with the intention of limiting them to the single election of that year. The language used may not be free from ambiguity, but the fact that it is not is evidence of the exceptional and temporary character of the order itself, for the establishment of an election precinct, pure and simple, could not afford the occasion for language such as is found in the text of the order, as follows:

Court of ordinary, Chatham County, sitting for county purposes.

OCTOBER 22, 1868.

*It being necessary that election precincts should be established in the county, in order to facilitate the election to be held on the 3d day of November next*, it is therefore ordered that election precincts be, and they are hereby, established at Cherokee Hill, in the eighth militia district, embracing the whole of said district; at Chapman's House, in the seventh militia district, embracing the whole of said district; and on the Isle of Hope, embracing the whole of the fifth and sixth militia districts.

HENRY S. WETMORE,
*Ordinary C. C.*

It is evident that if the ordinary had intended to establish these precincts permanently, he would not have incorporated in his order these words: "It being necessary that election precincts should be established in the county to facilitate the election to be held on the 3d day of November next." If it was his purpose to restrict the use of these precincts to the election of 1868, then these words are entirely appropriate; but if it was not his purpose to restrict them to a single election, these words are altogether superfluous and out of place, and it seems impossible to assign any valid reason for their presence in the order.

Mr. Wetmore, the ordinary, testifies on pages 284, 285, 288, and 289 of the large pamphlet, as follows:

Q. What legal precincts did you recognize as places of voting on the 5th day of November, 1872, when a member of the Forty-third Congress was voted for in Chatham County?

(Counsel for contestant objects to the question, on the ground that the recognition of witness in the premises has nothing to do with the issue in the case.)

A. My opinion is, and was at the date referred to, *that there were no legal election precincts in Chatham County at election referred to; that the only legal polling-place was at the court-house in Chatham County.*

Q. Were you appealed to or requested, on or before the 5th day of November, 1872, to establish election precincts outside the limits of the city of Savannah, in Chatham County; and, if so, by whom, and to what political party did those appealing or requesting belong?

(Counsel for contestant objects to the question, on the ground that it is not in rebuttal nor in support of any allegation contained in contestee's allegations.)

A. *The day preceding the election in question I was asked by Mr. J. E. Bryant, whom I understood to be a committee for this purpose, to establish the same election precincts in Chatham County as were established for the Presidential election of* 1868. *Hearsay makes Mr. J. E. Bryant a Republican.*

Q. When you speak of the precincts established for the Presidential election in 1868, in Chatham County, do you mean that they were only established for that election?

(Counsel for contestant makes same objection as to the previous question.)

A. As ordinary of Chatham County, I inherited the powers of the old inferior court, which, among other things, have the authority to establish or abolish election precincts,

conformably to the code of Georgia, in certain forms. Pursuant to this authority, and in accordance with the law, *I established several election precincts in Chatham County for the election to be held for President in* 1868. It was my intention, when I established these precincts, to have them in force only for the election referred to.

Cross-q. Does it not require an order of the court of ordinary to abolish a precinct once established by an order of the same?—A. If precincts are established *without any limitation as to their use*, I would say an order would have to be made to abolish them.

Cross-q. Would you state what words, if any, in the order 22d October, 1868, constitute the limitation that would abolish the precinct in question, without an order?—A. It is my opinion, and it was my intention, that the following words: "*Being necessary that election precincts should be established in the county to facilitate the elections to be held on the 3d day of November next*," being the first part of the order of October 22, 1868, should limit the establishment of election precincts in Chatham County for the day recited in the order only.

Cross-q. Does the order itself state that the precinct shall exist for that day only?—A. That is a matter of interpretation of meaning. *I think that the abolishment is a fair inference, at least from the context of the order, and so treated it for four years; and to the best of my knowledge and belief it was so treated for four years.*

Cross-q. What necessity, if any, existed at the time of the passage of the order for the establishment of precincts in the county, that did not exist at subsequent elections of a similar character?—A. In 1868 it seemed to me at least proper to try the experiment of new polling-places, then not existing in the county; the managers at some of these polling-places reported violence and intimidation shown them; and regarding these precincts established only for the Presidential election of 1868, I afterward concluded it better to have the elections held only at the court-house, under the eye of the sheriff and his deputies, so that, if possible, peace and good order could be preserved.

But if there could be any doubt that it was the object and intention of the order itself to limit the legal existence and restrict the use of these precincts to the election of 1868; if it could be supposed that the precincts had a legal existence subsequent to the election of 1868, it is nevertheless clear, to the undersigned, that they could not have survived the subsequent action of the legislature of Georgia, and of the ordinary of Chatham County. On the third day of October, 1870, an act of the legislature of Georgia was approved providing for the election of that year. While its affirmative provisions were mainly applicable only to that particular election, the title shows that its repealing clause was not of a limited, but of general application. The following is the title of the act, namely: "An act to provide for an election *and to alter and amend the laws in relation to the holding of elections.*" While the act contains provisions specially and exclusively applicable to a particular election, namely, that of 1870, it also contains general provisions for the alteration and amendment of the election laws themselves. Its repealing clause is broad and general, and it manifestly terminated the legal existence of these precincts, if they had any legal existence after the election of 1868.

This is the repealing clause:

All laws militating against or inconsistent with this act are hereby repealed.

This act contains the following provision:

SEC. 3. That said election shall be managed and superintended at the several court-houses at the county seat, and at any election precinct that may exist or be established in any incorporated or organized city or town, by managers chosen as follows.

It is plain that the previous statutory provisions authorizing the existence of precincts like these under consideration were in conflict with the provisions of this act, which tolerate precincts only in incorporated and organized cities and towns. These provisions were, therefore, not merely suspended for the occasion of the election of 1870, but were absolutely repealed.

After the enactment of this law, the following order was made by A. W. Stone, acting ordinary of Chatham County:

ORDER.

ELECTION PRECINCT, *November* 15, 1870.

Court of ordinary, Chatham County, sitting for county purposes, November term, 1870.

It being considered necessary, in order to carry out the provisions of an act of the general assembly of the State of Georgia entitled "An act to provide for an election and to alter and amend the laws in relation to the holding of elections," approved the 3d day or October, 1870, to establish an election precinct in Chatham County, it is therefore ordered that the city of Savannah be, and is hereby, made an election precinct, the place of receiving the votes at said election to be hereafter designated.

A. W. STONE,
*Ordinary Chatham County.*

It will be observed that this order absolutely establishes Savannah as a voting precinct, and then states that the place of receiving the votes "will be hereafter designated." Hence the following order was issued on the day of its date:

ORDER.

ELECTION PRECINCT, *December* 16, 1870.

*To the voters of Chatham County:*

You are respectfully notified that there will be but two ballot-boxes to receive your votes at the ensuing election, to be held on the 20th, 21st, and 22d instants, and that both boxes will be at the court-house in Savannah. Voters residing within the city limits are requested to vote in the box at President-street entrance to court-house (north side). Voters residing in Chatham County outside of the city limits will please vote at box on York-street entrance to court-house (south side).

HENRY S. WETMORE,
*Ordinary Chatham County.*

This order is addressed "To the voters of Chatham County;" those residing within the city limits are to vote at the north side of the court-house, and those outside of the city limits at the south side, thus showing clearly that not only the city but the entire county was embraced in the election precinct established by the order of November 15, 1870, thus including the three precincts now in question. It is urged that this was a temporary order; but if only temporary, why *was it issued at all?* Savannah was already a voting precinct, and if it was intended to include nothing but the city after the election of 1870, the order would not have read, "It is therefore ordered that the city of Savannah be, and is hereby, *made an election precinct,*" and there ended, but the words, for "*this election only,*" or words of similar import, would have been added, thus limiting it to the one occasion. Why re-establish Savannah as a voting precinct, when it was already established, unless it was the manifest intention to change its limits and include or exclude territory embraced by it under the old law? There was not a word in the act of 1870 *requiring* the ordinary to issue this order; and hence, when he did issue it, making it absolute in its terms, and embracing the whole county of Chatham, it, of necessity, abolished all other voting precincts in the county.

But the want of legal authority to hold elections at these precincts does not seem to the undersigned to be the only objection to the admission of these returns. The evidence satisfies them that their admission would result in the consummation of a gross fraud not only upon the sitting member but also upon the citizens of the district. So stealthily were these defunct precincts exhumed, that out of 1,241 votes alleged

to have been cast, only two were returned for the sitting member, and both of those from one precinct. If a democratic and a republican supervisor were nominally appointed for each precinct under the enforcement act on the 1st day of November, four days before the election, information of their appointment evidently either failed to reach the democratic appointees or seemed to them unworthy of notice, for two of those precinct returns show not a single democratic vote. Of the eighteen election officers alleged to have officiated, sixteen were residents of Savannah, who proceeded to these precincts, manifestly by a pre-concerted arrangement, to execute this scheme.

If there were, in fact, no statutory impediments to deter these non-resident, self-constituted election officers from the course which they took, nevertheless the undersigned can find no palliation for a proceeding so subversive of the fundamental principles of the elective franchise and so dangerous to the purity of the ballot-box.

These men not only acted as election officers, but also voted at these precincts, where they did not reside. The following testimony of witnesses called for the *contestant* discloses some of the facts of the case:

KING S. THOMAS sworn.

Q. What office did you hold in Chatham County on the 5th day of November last?—A. I was justice of the peace.

Q. In that capacity did you act as manager of an election on that day for Presidential electors and member of Congress, and where?—A. I did; at Isle of Hope, Chatham County.

Q. Who were the other managers of that election?—A. Joseph Snead and Lewis Bennett, freeholders.

Cross-q. Where did you and the other persons who attempted to hold an election at the so-called precincts reside at the time of said election?—A. Lewis Bennett and myself resided in the city of Savannah, and Joseph Sneed at White Bluff, in the 6th district. Lewis J. Moody resided in the 7th district, at Chapman's house; John A. Staley resided in the city of Savannah; Depont C. Rice resided in the city of Savannah; Isaac Seeley resided in the city of Savannah; James Porter resided in the city of Savannah; Avery Smith resided in the city of Savannah. The names of the clerks at the Isle of Hope were John H. Deveaux, who resided in Savannah; Isaac Beckett, who resided in Savannah; and William Cantwell, who resided in Savannah; Charles O. Fisher resided in Savannah; John J. Newton resided in Savannah. I was mistaken about William Cantwell being a clerk at Isle of Hope; he was at one of the other precincts; do not know which. Those are the only clerks whose names I know.

Cross-question. Did you and the other managers of the election, and clerks at said election, held at the so-called precinct at Isle of Hope, cast votes for Presidential electors and member of the Forty-third Congress?—Answer. I and the other managers and clerks, except one, voted at that election. I voted for Andrew Sloan. To the best of my knowledge, the managers and clerks were all Republicans.

AVERY SMITH sworn.

Question. Were you manager of an election at Cherokee Hill, in Chatham County, for Presidential electors and member of Congress, on the 5th day of November last? If so, who else were managers, and in what capacity did you each act as such?—Answer. I was. Mr. Isaac Seely and John A. Staley were the others who acted with me. We all acted in the capacity of freeholders.

Cross-question. Where did you and the other managers at the precinct where you presided, and the clerks, reside at the time of said election?—Answer. They all resided in the city of Savannah.

Cross-question. Did you and the managers and the clerks at the so-called precinct vote for members of Congress and for Presidential electors at that place?—Answer. I voted, and to the best of my knowledge the other managers voted. I do not know for whom they voted. I voted for Andrew Sloan.

Cross-question. Was said election held in any house; or where was it held? Did you have a ballot-box; and from whom did you obtain it?—Answer. It was not in a house. *Two of the managers having the ballot-box in charge sat in a buggy. One of them received the ballots from the voters and sang out the name to the clerks, at the same time numbering the ballot and passing the same to the other manager, who put it in the ballot-box. The clerks were in a carriage near by the buggy. I do not know from whom the ballot-box was obtained.*

JAMES PORTER sworn.

Question. Did you act as manager at the election for Presidential electors and Congress on the 5th day of November last? If so, where, and in what capacity, and who were your fellow-managers?—Answer. I did act as a manager at Chapman's house, in Chatham County, as a freeholder. L. C. Rice, a freeholder, and L. J. Moody, a justice of peace, presided with me.

Cross-examined:

Cross-question. Where was your residence and the residence of the other managers, and of the clerks, who presided with you at said precincts on the day of said election?—Answer. My residence, and that of my fellow-manager, Mr. Rice, and the clerks, was at Savannah, Chatham County. There were three clerks. Lewis J. Moody, justice of the peace, who presided at said election, resided at the 6-mile post on the Ogeechee road.

Cross-question. Did you and the other managers and the clerks at said precinct vote on the day of said election at said precinct?—Answer. I did, and presume they did; cannot say positively.

The undersigned respectfully submit that the admission of the returns of these vagabonds from Savannah—who, not being officers of the law, at the instance of the contestant, impudently invaded districts where they did not reside, and undertook to vote and hold elections in communities where they were strangers—would be to ignore all the safeguards against fraudulent and illegal voting and management secured by residence, official character, and acquaintance with the people. The sitting member insists that this scheme was devised to secure an opportunity for a deposit, without challenge, of a large number of illegal and fraudulent ballots; and the facts demonstrate not only the probability that the scheme was devised for that purpose, but also its remarkable adaptation to the ends proposed.

One additional fact may here be emphasized as showing the temporary character of these precincts. At Cherokee Hill there was neither house, barn, nor pig-sty in which to hold the election. It was simply a point in the public highway, with neither tree nor stump to mark its location. The votes cast for the contestant here were received by two of his friends, *sitting in the buggy, which he had doubtless hired for them at Savannah, and the clerks sat in a carriage near by!* What kind of a ballot-box they had, or where they got it, does not appear. That the ordinary of Chatham County *intended* to establish *such* a place as a *permanent* voting-precinct is beyond the domain of intelligent belief.

### 11. WARE COUNTY.

The committee reject the claim of contestant as to this county, and hence we pass it.

### 12. JEFFERSONTON PRECINCT, CAMDEN COUNTY.

The contestee objects to the vote of Jeffersonton precinct, Camden County, where the contestant received a majority of 205, on the ground that there was no such lawful voting-place. It is provided by section 1312 of the code of Georgia that the court-house or county site of each county shall be a voting-place, and that other precincts may be established by the ordinary. By virtue of the provisions of an act of the legislature of Georgia, the court-house or county site of Camden County had been removed from Jeffersonton to Saint Mary's before this election. Joseph Sheppard, one of the managers of the election at this precinct, testifies, on page 47 of the large pamphlet, that the county site was at Saint Mary's on the day of the election. The building which had formerly been a court-house of course remained in Jeffersonton; but it was

no longer a court-house in the sense of the statute, and no longer a place for voting.

This identical question was decided by the house of representatives of Georgia in 1873, in a contested election, which turned on the vote of this precinct. The case was that of Hillyer *vs.* Tompkins. The report of the committee on elections is printed on pages 407 and 408 of the journal of the house of representatives of Georgia for 1873. The committee concluded that the votes cast for a member of the general assembly, at this precinct, on the 2d of October, 1872 (one month earlier than the election now contested), were illegal and void, because the precinct had no legal existence; and the report was adopted by the house. And under the plain letter of the law, it seems impossible to come to any other conclusion. Hence we deduct from the contestant his majority of 205, received at this box.

### 13. RICEBOROUGH PRECINCT, LIBERTY COUNTY.

The vote alleged to have been cast for the contestant at this precinct of 339 was consolidated and counted. The return is exceedingly informal and irregular; or, to speak more accurately, there is no evidence of *any* return at all. But there is some evidence of the actual vote given, and hence, under all the circumstances, we allow the vote to stand.

### 14. TWO HUNDRED AND FIFTY-NINTH DISTRICT, SCRIVEN COUNTY.

The sitting member alleged that the vote of this precinct was as follows:

| | |
|---|---|
| Morgan Rawls | 31 |
| Andrew Sloan | 4 |
| Majority for Rawls | 27 |

He claimed that this vote was not consolidated or canvassed, but should be counted by the House.

The testimony of E. J. Sheppard (page 6, small pamphlet) shows the foregoing to be a correct statement of the vote of this precinct, and that it was excluded from the consolidated return of Scriven County, because the oath of the precinct managers was not subscribed by them. Sheppard testifies that he, as justice of the peace, did, in fact, administer the oath to them, and that the certified copies of the returns of this precinct, marked exhibits S and T, on pages 28, 29, and 30, are true copies of the returns. And this proof is not only wholly uncontradicted, but is confirmed by the statements of the consolidating managers on page 30, and by the report of the United States supervisor on page 31.

The undersigned are clearly of the opinion that the vote of this precinct should be counted by the House.

### 15. SCOTLAND PRECINCT, EMANUEL COUNTY.

This precinct, as returned, gives Sloan 19 and Rawls 10 votes. There is no evidence of any kind that the managers were sworn, and the law requires three managers, while but two sign this return. The return itself failing to show a compliance with the positive requirements of the

law, it was incumbent on the contestant to supplement it with parol evidence. This he has not done, nor attempted to do. We reject this return, and deduct 9 from Sloan's vote.

### 16. RECAPITULATION.

The regular returns, as made up and sent to the governor by the consolidating managers of election, are as follows:

| | Votes for Andrew Sloan. | Votes for Morgan Rawls. |
|---|---|---|
| Appling | 9 | 152 |
| Bryan | 272 | 200 |
| Bulloch | 000 | 568 |
| Burke | 1,093 | 1,051 |
| Camden | 414 | 184 |
| Charlton | 147 | 50 |
| Chatham | 2,428 | 3,161 |
| Clinch | 28 | 291 |
| Effingham | 157 | 272 |
| Emanuel | 70 | 348 |
| Echols | 75 | 47 |
| Glynn | 566 | 243 |
| Liberty | 603 | 238 |
| McIntosh | 544 | 127 |
| Pierce | 147 | 180 |
| Scriven | 205 | 554 |
| Tatnall | 46 | 376 |
| Ware | 116 | 133 |
| Wayne | 59 | 143 |
| | 6,979 | 8,319 |
| Majority for Rawls | | 1,340 |

Add the following:

| | Sloan. | Rawls. |
|---|---|---|
| Bailey's mill precinct | 94 | 17 |
| Error in Burke County | 38 | |
| 259th district, Scriven County | 4 | 31 |
| | 136 | 48 |
| Rawls's majority | | 1,252 |

Deduct the following which were consolidated and counted:

| | Sloan. | Rawls. |
|---|---|---|
| Jefferson precinct, Camden County | 205 | |
| Scotland precinct, Emanuel County | 19 | 10 |
| | 224 | 10 |
| Leaving to be added to Rawls's majority | | 214 |
| Rawls's majority as above | | 1,252 |
| Rawls's actual majority | | 1,466 |

We therefore report the following resolution:

*Resolved*, That Hon. Morgan Rawls, the sitting member, was duly elected, and is entitled to the seat occupied by him in this House as the Representative from the first district of Georgia in the Forty-third Congress.

R. M. SPEER.
L. Q. C. LAMAR.
EDWARD CROSSLAND.

## BURNS vs. YOUNG.—TENTH CONGRESSIONAL DISTRICT OF KENTUCKY.

Irregularity in the count of the vote.

The election laws of the State provide the ballots shall have no distinguishing mark upon them. It was held that the ballots cast bearing the prefix of "Hon." upon them should have been counted.

Where irregularities charged were of a nature to affect the validity of a return, and secondary proof of the actual vote cast exhibited a result not differing from that shown by the returns, the vote was counted.

The House adopted the report April 11, 1874.

Jno. D. Young retained his seat.

April 6, 1874.—Mr. Crossland, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the contest of John M. Burns against John D. Young, claiming a seat in the House of Representatives of the Forty-third Congress as Representative from the tenth Congressional district of Kentucky, submit the following unanimous report:*

The credentials of the sitting member exhibit the votes received by each, as follows:

| Counties. | Jno. D. Young. | Jno. M. Burns. |
|---|---|---|
| Bracken | 975 | 548 |
| Mason | 1,663 | 1,338 |
| Lewis | 709 | 937 |
| Greenup | 525 | 866 |
| Boyd | 414 | 638 |
| Carter | 427 | 560 |
| Lawrence | 437 | 427 |
| Johnson | 313 | 490 |
| Rowan | 164 | 272 |
| Bath | 875 | 717 |
| Martin | 27 | 178 |
| Nicholas | 974 | 645 |
| Fleming | 1,041 | 984 |
| Robertson | 330 | 285 |
| | 9,073 | 8,885 |
| | 8,885 | |
| Young's majority | 188 | |

The grounds of contest are contained in the notice of contestant, a copy of which is here appended:

No. 1.—*Notice of contest.*

Mr. JOHN D. YOUNG: You are hereby notified that I will contest your right to a seat in the Forty-third Congress as a member elect from the tenth Congressional district in the State of Kentucky, on the following grounds:

1st. Because you did not, at the election in said district on the 5th day of November, 1872, receive a majority of the legal votes cast at said election in said district.

2d. Because votes were counted for you and against me at said election, when the poll-books were not signed by the proper officer as required by law; nor were said poll-books and the votes for Congressmen certified as the law required.

3d. Because the ballot-box at the Dry Fork precinct, in Lawrence County, in said district, was not sealed; nor was the poll-book sealed; nor were said box and book carried to the county court clerk of said county by an officer of the election, or by any one in the presence or company of such an officer, but was carried by a boy some fifteen or sixteen miles in said condition, and by him delivered to the clerk.

4th. Because the poll-book at the Deer Creek precinct, in Carter County, in said district, was not signed or certified as required by law.

5th. Because ballots or votes legally or properly cast for me in the counties of Bracken, Nicholas, Robertson, Rowan, Mason, Bath, Boyd, and Fleming, in said district, were illegally, wrongfully, and fraudulently thrown out, and not counted, by the precinct and county election boards of said counties.

6th. Because in the computation of votes or ballots cast in the counties last above named the various election boards of said counties counted for you more votes than you received.

7th. Because I received at said election in said district a majority of the legal votes cast therein; and, for the reason herein set out, I will claim the seat in said Congress from said State and district as member elect therein.

Respectfully,

JOHN M. BURNS.

DECEMBER 23 1872.

The answer of contestee denies each of the grounds presented by the notice, and makes the following "charges" in regard to the votes received by contestant:

1st. You did not receive a majority of all the legal votes cast at said election, in said district, on the 6th day of November last, and I did.

2d. Illegal votes, and votes by minors and persons who had not resided in the counties and precincts the time required by law, were cast for you in each precinct of said district.

3d. Voters were directly and indirectly bribed to vote for you, by the free use of whisky, money, and property, in the counties of Lewis, Greenup, Boyd, Lawrence, and Martin, and said voters did, under said influences, vote for you, and in said counties many voters were awed and intimidated, and prevented from voting for me and forced to vote for you.

4th. I charge that at every precinct in said district where you received a majority the poll-books and ballot-boxes were not signed and sealed and delivered to the clerks of the various county courts, as required by law; and votes were obtained for you at each of said precincts by bribery, fraud, and intimidation.

5th. I charge, and will prove, that all the votes cast for you in the counties of Nicholas, Robertson, Bracken, Mason, Fleming, Lewis, Greenup, Boyd, Lawrence, Martin, Johnson, Carter, and Rowan were illegal and void, being in violation of the fifth section of the act of the Kentucky legislature in regard to voting by ballot, approved March 27, 1872, which is as follows:

"All ballots shall be printed or written on white paper, and shall have on them the name of the person voted for, and shall have no other distinguishing mark on them, and each ballot shall be so folded as not to show any part of the name written or printed on it."

I state, and allege, in the counties above named the ballots voted for you had the "distinguishing mark" "Hon." before John M. Burns, while others had "Hon. John M. Burns" and other distinguishing marks, and all of which ballots were counted for you, in violation of the eighth section of said act of the Kentucky legislature.

6th. I charge that all the votes cast for you in the county of Martin were not deposited in ballot-boxes with locks and keys to them, as provided by said act of the Kentucky legislature.

7th. I charge fraud upon your part and upon the part of your friends in circulating the report in the county of Martin that I was no candidate, losing to me by said report more than one hundred votes.

For these reasons I deny your pretended right to a seat in the Forty-third Congress of the United States from the tenth Congressional district of Kentucky.

Respectfully,

JOHN D. YOUNG.

OWINGSVILLE, KY., *January* 6, 1873.

This was the first election held under the statute of Kentucky requiring elections for Representatives in Congress to be by ballot, as directed by the act of Congress approved February 28, 1871.

The directing provisions of the act of the Kentucky legislature are very elaborate, and were not in every instance strictly complied with by officers who conducted the election. Many irregularities occurred in precincts in which contestee received majorities, and exactly similar

irregularities occurred in precincts which gave majorities for contestant. And, if proof of mere irregularities is sufficient to vitiate the vote in these precincts and these only counted where there was strict conformity to the Kentucky statute, the majority of the contestee would be increased. In some instances the county boards, in compliance with a provision of the statute which directs that the ballots shall have on them the name of the person voted for, and no other distinguishing mark, threw out ballots cast for contestant because the word "Hon." was prefixed to his name on them. The committee are of opinion that the ballots thrown out for this reason ought to have been counted for contestant. In the county of Bracken there were thrown out because of the prefix "Hon." 36 ballots for contestant. In the county of Mason, according to the certificates of the precinct officers, Young received 1,663, Burns 1,347. The county board certify for Burns 1,338 votes, or 9 votes less than the precinct certificates aggregate. These 9 votes the committee believe ought to be counted for Burns for the reason that the county board refused to allow any person except the members of the board to be present when the ballots were counted. Witness Hutchens swears that he asked that permission to remain in the room while the board were counting the votes, and was refused by a member of the board.

The said witness, Hutchens, testifies that the members of said board are men of integrity and veracity; nevertheless the committee consider the practice reprehensible and dangerous, and believe that contestant Burns ought to have corrected for him all the votes certified by the precinct officers, viz, 1,367; which would give Burns as follows:

| | |
|---|---|
| Vote certified by State board | 8,885 |
| Ballots thrown out as stated above | 36 |
| Difference between votes certified by district precincts and county boards in Mason County | 9 |
| Which makes contestant's vote | 8,930 |
| In Bracken County three ballots given for contestee Young were thrown out because the prefix "Hon." was on them | 3 |
| Thrown out in Fleming County for the same reason | 1 |
| Vote for contestee certified by State board | 9,073 |
| Total vote for contestee | 9,073 |

There is no allegation or proof of fraud in the manner of conducting the election in other counties or precincts.

The counties of Lewis, Greenup, Boyd, Carter, Johnson, Martin, and Rowan gave majorities for contestant, and contestant received majorities in various precincts in the counties which gave majorities for contestee, and the committee find that in these counties and precincts the same irregularities were committed as in the precincts and counties which gave majorities for contestee.

In conclusion, the committee are of opinion that, concerning the precincts wherein the irregularities were of so grave and important a nature as to affect the validity of the returns, the secondary proof of the actual votes cast shows a result not differing from that shown by the returns. In other precincts, the irregularities complained of on both sides, though to be reprehended, are not of a nature to necessarily affect the validity of the returns.

The committee recommend the adoption of the following resolution:

*Resolved*, That John D. Young, the sitting member, was duly elected a Representative in the Forty-third Congress from the tenth congressional district of Kentucky, and is entitled to his seat.

## MAXWELL vs. CANNON.—TERRITORIAL DELEGATE OF UTAH.

Gross irregularities charged in the manner of conducting the election and making up the returns. The testimony failed to show that the contestant received a majority of the legal votes cast.

As to the qualification of sitting member by reason of ineligibilty, that he was the husband of more than one wife, and had preached bigamy or polygamy; it was held that in any event the contestant could not be admitted to the seat he claims.

The minority candidate claiming the seat on the ground of the ineligibility of the majority candidate; it was held that a minority of voters cannot, without special provision, elect a representative.

Minority and majority reports submitted.

The following resolution, offered by Mr. Harrison, of Tennessee, was substituted for the resolution of the committee, and adopted May 12, 1874—yeas, 135; nays, 74; not voting, 81: "That George Q. Cannon was duly elected and returned as a Delegate from the Territory of Utah, and is entitled to a seat as a Delegate in the Forty-third Congress."

Authorities referred to: Wallace *vs.* Simpson, 41st Congress; Barney *vs.* McCreery, 10th Congress; B. F. Whittemore, 41st Congress; Mr. Matteson, 35th Congress; B. G. Harris, 39th Congress.

April 30, 1874.—Mr. Gerry W. Hazelton, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the above-entitled case, having had the same under consideration, beg leave to submit the following report:*

The notice of contest and the answer, which are herewith given, indicate the questions submitted to your committee:

No. 1.—*Notice of contest.*

To George Q. Cannon, claimant, *vs.* George R. Maxwell, contestant, for a seat as Delegate from Utah Territory in the Forty-third Congress of the United States of America:

You are hereby notified that I, George R. Maxwell, will appear before the House of Representatives of the United States of America upon the 4th day of March, 1873, or as soon thereafter as I can be heard, and then and there contest your right to hold a seat as Delegate from Utah Territory in said Congress, by virtue of a certain certificate which you now hold, dated October 12, 1872, signed by George L. Woods, as governor of Utah Territory, which said certificate is based upon the last general election returns held in Utah Territory, because—

First. You did not receive a majority of legal votes cast in a legal manner at said election.

Second. That said election was not a free and fair expression of the voters of Utah Territory, they, the voters, having been influenced by fear of one Brigham Young; that you did combine and confederate with the said Young and others, and by duress and violence did compel each and every voter who voted for you to so vote under no less a penalty than death.

Third. That at said election each and every ballot was numbered, and a corresponding number was kept by your confederates for the purpose of intimidation.

Fourth. All numbered ballots should have been thrown out of the returns of said election, thus giving me a majority of the legal votes cast in a legal manner in precincts where no numbers were used.

Fifth. The returns of said elections show that you received twenty thousand nine hundred and sixty-nine votes, and that I received one thousand nine hundred and forty-two votes; scattering, two votes; while in truth and fact I received three thousand five hundred and twenty-two votes, all of which were legal votes cast in a legal manner; that in addition thereto I received one thousand legal votes in the county of Beaver and other parts of the Territory of Utah, which were illegally thrown out because you and your confederates willfully neglected and refused to establish election precincts in places where the miners could vote; also, I was deprived of two thousand votes because the judges of election would allow no one to vote for me who had not actually paid Territorial taxes and lived

one year in the precinct where he offered his vote; making a total vote of twenty-seven thousand four hundred and ninety-one in a population of eighty-five thousand; and that any individual, male or female, throughout the entire Territory, could vote for you without qualifications, and all that offered did so vote for you.

Sixth. That fifteen thousand women, whose votes are illegal, voted for you; that of the fifteen thousand women who thus voted, five thousand of them were of foreign birth and not naturalized, and about five thousand of the women were under the age of twenty-one years.

Seventh. That the male and female voters in all the precincts voted together, using the same poll-lists and ballot-boxes, thus rendering it impossible to separate the male and female vote; and because the separation cannot be made, the entire vote, where ballots were so used, must be thrown out, thus leaving me a majority of legal votes in precincts where no females voted. That, aside from female votes, eight thousand males voted for you who were of foreign birth and unnaturalized; and that large numbers of males voted for you who were under the age of twenty-one years. That you are personally disqualified, as you cannot take the oath of office, having heretofore, to wit, on the 15th day of May, 1848, at Nauvoo, Ill., taken the oath to obey one Brigham Young, and his successors, in all things temporal and spiritual, upon pain of death, and an oath of disloyalty to the United States, and that you would do all in your power to thwart and overthrow the government; which oath you now consider binding.

Eighth. That you cannot take the oath of office, having declared upon oath heretofore, to wit, on the 15th day of November, 1871, at Salt Lake City, that you considered the revelations of polygamy paramount to all human law, and that you would obey said revelations rather than the law of any country.

Ninth. That you are further personally disqualified because you are a bigamist, and living in open and continued violation of the law of God, man, your country, decency, and civilization, and the act of Congress of 1862, entitled "An act to prohibit polygamy in the Territories."

Tenth. That you are now living and cohabiting with four pretended wives, in defiant and willful violation of the law of Congress of 1862, entitled "An act to prohibit polygamy in the Territories." That you, the said George Q. Cannon, are living in polygamy.

Eleventh. That you have declared upon your oath, upon the 15th day of November, 1871, or thereabouts, that you considered polygamy, or the revelation authorizing it, paramount to all human law; that no oath of allegiance to the Government of the United States would be binding in your case because of these promises, and the voters of Utah Territory had full and ample notice of these disqualifications; therefore the votes cast for you were void and of no effect.

Twelfth. The certificate before referred to is void, because notice of your personal disqualifications was brought home to the governor of Utah Territory on the 10th day of September, at his office in Salt Lake City, in words and figures as follows, to wit:

"SALT LAKE CITY, UTAH TERRITORY,
"*September* 10, 1872.

"To his Excellency GEO. L. WOODS,
*Governor of Utah:*

"I, the undersigned, do, in the name of the loyal citizens of Utah, solemnly protest against the issuance of a certificate of election to George Q. Cannon as Delegate to Congress from Utah Territory, for the following reasons, to wit:

"First. Because of the illegality of the votes cast for said George Q. Cannon, and also because many of the voters were disqualified by reason of their extreme youth, and because not naturalized. Again, because the ballots were so numbered as to bring the terrorism of a so-called religion to bear upon the consciences of the voters, thus robbing them, for the time, of their free moral agency, and desecrating the proud and sacred franchise of American citizens.

"Again, I do solemnly protest against issuing said certificate to said George Q Cannon, because of his disqualification, inasmuch as he is bound by solemn oath to recognize the will of the head of the Mormon Church and priesthood as a power superior to the Constitution and laws of his country, by the very nature of his oath necessitating obedience to that will, even when it conflicts with said Constitution and laws. Again, because he cannot take the oath of office, having declared in open court that the revelation of polygamy is paramount to all human law. Again, because said George Q. Cannon is living in open and persistent violation of his country's laws, being a noted polygamist. Again, because his admission to a seat in Congress would involve the nation in manifest complicity with polygamy. Again, because it would be a virtual recognition of polygamy as the state or national religion. Again, because it would be an outrage against the moral sentiment imbedded in the hearts of a mighty people, irrespective of their religious faith or political predilections. Again, because it would pave the way for the admission of Utah as a State, and the inevitable ostracism and terrorism that would inaugurate a reign of anarchy in Utah, involving the innocent with the guilty. And the voters of Utah had full and ample notice of these disqualifications.

"GEO. R. MAXWELL, *Protestant.*"

Thirteenth. Each and every fact charged in said protest is true. You will further take notice that I will claim said seat as Delegate from Utah for the Forty-third Congress.

GEO. R. MAXWELL,
*Contestant.*

Received copy of the within October 29, 1872.

GEO. Q. CANNON.

SALT LAKE CITY.

---

No. 2.—*Answer.*

In the matter of the application of George R. Maxwell, contestant, against George Q. Cannon, claimant and contestee, for a seat as Delegate from Utah Territory in the Forty-third Congress of the United States of America.

To GEORGE R. MAXWELL, *Contestant:*

In answer to your notification and statement of grounds on which you rely to contest my right and to support your claim to a seat in the Forty-third Congress as Delegate from Utah Territory, I deny—

First. The first allegation contained in said statement, that I did not receive a majority of the legal votes, cast in a legal manner, at the election for such Delegate held in Utah Territory on the first Monday of August (August 5) A. D. 1872. I deny,

Second. That said election, as alleged by you in the second ground of said statement, was not a free or fair expression of the voters of Utah Territory, or that the said voters, or any of them, were influenced by fear of Brigham Young or any other person. I further deny that I combined or confederated with the said Young, or any other person or association, to influence the said election, or that I, or any one on my behalf, or otherwise, did, by duress, violence, or other coercion, compel each or any voter who voted for me at said election so to vote, under the penalty of death, or any other penalty whatever.

Third. I deny the third allegation in said statement contained, "that each and every ballot was numbered and a corresponding number was kept by your (my) confederates for the purpose of intimidation." I admit that the ballots cast at said election were numbered and deposited in the ballot-boxes by the judges of the election as they were received from the voters, and that the clerks at the several election precincts then wrote the name of the elector on the poll-list and opposite it the number of his vote; but I deny that this was done for the purpose of intimidation, or for any other purpose or reason than to comply with the laws of Utah Territory applicable to and regulating said election.

Fourth. I deny the fourth allegation of said statement, that "all numbered ballots should have been thrown out of the returns of said election." I base my denial on the fact that said ballots were numbered and deposited in the ballot-boxes, and the names of the electors, and the number of their votes opposite their respective names, written on the poll-lists in strict compliance with the provisions of the act of the legislative assembly of the Territory of Utah, entitled "An act to provide for the election of a Delegate to the House of Representatives of the United States," approved January 10, 1867; and of an act of said legislative assembly, entitled "An act regulating elections," approved January 3, A. D. 1853. I allege, as a conclusion of law, that all ballots cast in the manner prescribed by the acts above referred to should have been received and counted. I deny that you received a majority of legal votes, cast in a legal manner, at said election.

Fifth. As to the fifth allegation made in said statement, I admit, as therein stated, that the returns of said election show that I received twenty thousand nine hundred and sixty-nine votes, and that the same returns show that you received one thousand nine hundred and forty-two votes. I deny that you received three thousand five hundred and twenty-two legal votes; and if the votes you received, as shown by said returns, were cast in the manner stated in the fourth allegation of your statement, I deny that you received any legal votes at said election. I deny that in the county of Beaver, or any other place in the Territory of Utah, one thousand, or any other number, of legal votes received by you were thrown out. I deny that I or others, willfully or otherwise, neglected or refused to establish election precincts in places where miners could vote. I further deny that you were deprived of two thousand votes at said election because the judges thereof would allow no one to vote for you who had not actually paid Territorial taxes and lived one year in the precinct where he offered to vote. I deny that any individual was allowed to vote for me who was not possessed of the requisite qualifications prescribed by the laws in force in said Territory for the exercise of the elective franchise. I deny, upon information and belief, that any legal vote offered for you at said election was rejected by the judges of the election, or that voters friendly to you were not allowed any and all the rights exercised or claimed by those who favored me.

Sixth. In answer to the sixth ground of contest in said statement contained, I deny that fifteen thousand women voted for me. I admit that I received the votes of a number of female citizens of the United States, residing in and citizens of the Territory of Utah, which I estimate, on information and belief, at somewhat less than ten thousand. I deny your as-

sertion that five thousand of the number who thus voted for me were of foreign birth and not naturalized, or that about five thousand of them were under the age of twenty-one years. I allege, on information and belief, that the women who voted for me at said election were citizens of the United States, had been for six months next preceding said election residents in the Territory of Utah, were twenty-one years of age, and possessed all the qualifications required of voters in said Territory under the provisions of an act of Congress of the United States entitled "An act to establish a Territorial government for Utah," approved September 9, 1850, and of an act of the Territorial legislature of Utah, entitled "An act conferring upon women the elective franchise," approved February 12, 1870.

Seventh. In answer to your seventh allegation, I claim that it is contradictory and inconsistent in this, to wit: In one place you assert "that the male and female voters in all the precincts voted together, using the same poll-lists and ballot-boxes," and in another clause of the same sentence you assert that there were "precincts where no female voted." I admit that male and female voters at said election used the same poll-lists and ballot-boxes, but I deny your conclusion that it is impossible for that reason to separate male and female voters, or that such ballots should, for the reasons assigned, or for any other valid cause, be thrown out and not counted. I deny that you received a majority of legal votes in precincts where no female voted. I deny that eight thousand or any number of males voted for me who were of foreign birth and unnaturalized. I deny that a large or any number of males voted for me who were under the age of twenty-one years. And I further deny, upon information and belief, that any persons voted for me at said election who were not qualified and legally entitled to vote.

Eighth. As to the eighth allegation contained in said statement, I deny that on the 15th day of May, 1848, at Nauvoo, Ill., or at any other time or place, I took an oath or an obligation to obey Brigham Young or his successors in all things or in anything, temporal or spiritual. I deny that at Nauvoo or elsewhere I ever took an oath or other obligation of disloyalty to the United States, or that I ever, at any time or place, took an oath or obligation to thwart or overthrow the government; and I utterly deny that I have ever taken any oath, affirmation, or other obligation, or made any declaration inconsistent with my loyalty and allegiance to the United States or obedience to the government and laws thereof.

Ninth. In answer to the ninth allegation made in said statement, I deny that on the 15th day of November, 1871, at Salt Lake City, or at any other time or place, I declared, upon oath or otherwise, that I considered the revelation of polygamy paramount to all human laws, or that I would obey said revelation rather than the laws of any country.

Tenth. In response to the tenth allegation contained in said statement, I deny that I now live, or have ever lived, in violation of the laws of God, man, my country, decency, or civilization, or of any law of the United States.

Eleventh. I deny that I am now living with four wives, or that I am living or cohabiting with any wives, in defiant or willful violation of the law of Congress of 1862, entitled "An act to prohibit polygamy in the Territories."

Twelfth. In answer to your twelfth allegation, I deny that, on the 15th day of November, 1871, or at any other time, I declared, under oath or otherwise, that I considered polygamy, or the revelations authorizing it, paramount to all human law. Whether the voters of Utah had ample or full notice of the pretended disqualification alleged in your said statement I am unable to say, and therefore neither admit nor deny. I deny as untrue and scandalous the conclusion you have deduced and stated, viz, "That no oath to the United States would be binding on me," and I oppose to such assertion not only my positive denial, but the reputation I have always sustained and merited as a citizen obedient to the laws and devoted to the interests of his country.

Thirteenth. In response to the thirteenth allegation of your statement, that you served on the governor of Utah Territory a copy of the notice embodied in said statement, I neither admit nor deny that such service was made, but I demur to and deny the conclusion which you have drawn from the alleged fact, viz, That the certificate of election which I received from his excellency the governor of Utah Territory is void. As to the matters charged in said notice, I deny alike all the pretended facts therein asserted and the inferences and conclusions which you have thought proper to deduce therefrom.

Fourteenth. Each allegation contained in your statement, except such as I have expressly admitted, is traversed, and the proof hereby demanded.

In addition to the foregoing answer and denial of all the material specifications contained in your said statements and notification, I hereby notify you that I rest the validity of my election as Delegate from Utah Territory to the Forty-third Congress of the United States of America, and shall claim a seat therein as such Delegate, on the following grounds, to wit:

1st. That on the first Monday, being the 5th day of August, A. D. 1872, an election was held in the Territory of Utah for Delegate from said Territory to the Forty-third Congress of the United States, in pursuance of an act of the legislative assembly of the Terirtory of Utah, entitled "An act to provide for the election of a Delegate to the House of Representatives of the United States," approved January 10, 1867.

2d. That said act was passed pursuant to section 13 of Statute of the United States, entitled "An act to establish a Territorial government for Utah," approved September 9, 1850.

3d. That election precincts were, prior to the said election, duly established by the county

courts of the several counties of the Territory of Utah in pursuance of an act of the Territorial legislature of said Territory, entitled "An act creating the office of selectmen and prescribing their duties also the duties, of the county courts," approved January 8, 1866, and that in each county suitable and convenient precincts were thus established for the accommodation of all legal voters.

4th. That at said election the senior justice of the peace of each precinct acted as the judge of the election, and appointed one clerk of election; that in the absence of such justice the electors first assembled at a precinct appointed a suitable person to act as judge; that the said election was held from one hour after sunrise until sunset. All of which was in pursuance of an act of the Territorial legislature of said Territory, entitled "An act regulating elections," approved January 3, 1853.

5th. That said election was conducted in strict conformity to all the provisions of the Territorial act last above recited, which said act is pursuant to and in accordance with the provisions of section 13 of the act of Congress organizing a Territorial government for Utah.

6th. That the ballot-boxes and poll-lists were sealed up at the close of said election, at the several precincts, by the judges of the election, and forwarded without delay to the county clerks of the several counties in which said precincts were situated; that the ballots cast were duly counted and canvassed by the officers designated by law, and returns of the election for Delegate were forwarded to the secretary of said Territory, as required by the act of the Territorial legislature, before cited, entitled "An act regulating elections."

7th. That after a careful count and canvass of the returns thus received, by the secretary of the Territory of Utah, a certificate of election was given to me by the Hon. George L. Woods on the 11th day of October, 1872, a copy of which is in words and figures following, to wit:

"UNITED STATES OF AMERICA,
"*Territory of Utah, ss:*

"I, George L. Woods, governor of Utah Territory, do hereby certify that, at an election held in and for the Territory of Utah on the 5th day of August, A. D. 1872, for Delegate to the House of Representatives of the United States, twenty two thousand nine hundred and thirteen votes were cast, of which number George Q. Cannon received twenty thousand nine hundred and sixty-nine, and George R. Maxwell received one thousand nine hundred and forty-two; and that two votes were cast for other persons; and that the said George Q. Cannon having received the greatest number of votes for said office at said election, is by me hereby declared duly elected Delegate to the House of Representatives of the United States from the Territory of Utah to the Forty-third Congress.

"In testimony whereof I have hereunto set my hand and caused the seal of the Territory of Utah to be affixed.

"Done at Salt Lake City, Utah Territory, on this the 11th day of October, A. D. 1872.

"GEORGE L. WOODS,
"*Governor of said Territory.*

"By the governor:
"GEORGE A. BLACK,
"*Secretary of said Territory.*"

8th. That at said election, twenty-two thousand nine hundred and thirteen votes were cast, of which number I received twenty thousand nine hundred and sixty-nine, as shown by the returns in the office of the secretary of the Territory and by the aforesaid certificate of his excellency the governor.

9th. That all who voted for me at said election were citizens of the United States, and entitled to vote under the provisions of sections 5 and 13 of the act of Congress of the United States entitled "An act to establish a territorial government for Utah," approved September 9, 1850, and of the laws of the Territorial legislature passed in pursuance of said act.

10th. That of the number of voters who voted for me at said election about eleven thousand were males; all of whom, as I am informed and believe, and therefore state the fact to be, were, at the time, citizens of the United States, over the age of twenty-one years, tax-payers, and constant residents of the Territory of Utah during the six months next preceding the said election, and all entitled to vote at said election, under the provisions of the organic act before cited and of the law of the Territorial legislature of Utah, entitled "An act prescribing certain qualifications necessary to enable a person to be eligible to hold office, vote, or serve as a juror," approved January 21, 1859.

11th. That of the whole number of voters who voted for me at said election somewhat less than ten thousand were women, all of whom, as I am informed and believe, were, at the time of said election citizens of the United States, over twenty-one years of age, had resided in the Territory of Utah for six months next preceding said election, and were entitled to vote under the provisions, before referred to, of the act organizing the Territory, and of the law of the Territorial legislature of Utah, entitled "An act conferring upon women the elective franchise," approved February 12, 1870.

12th. That the population of Utah on the 5th day of August, 1872, was in excess of one hundred thousand, and there were over twenty-five thousand legal voters in the Territory.

13th. That at the time of said election for Delegate I was, as I am now, a citizen of the United States, had been for nearly twenty-five years a resident of the Territory of Utah, and was eligible to said office.

14th. That the said election was a fair and free expression of the choice of the legal voters of Utah Territory. No effort was made by me, or by any persons for me, to influence, by duress, intimidation, reward, or promise of reward, the action of any voter; that all were free to exercise their own judgment in the premises.

15th. That, as appears by the official returns of said election and the governor's certificate in relation thereto, you did not receive more than one thousand nine hundred and forty-two votes, and are not, in any event, entitled to the seat, which you claim in defiance of all law, justice, and precedent.

GEORGE G. CANNON,
*Delegate Elect.*

SALT LAKE CITY, UTAH TERRITORY,
*November* 23, 1872.

I hereby admit service of the within answer of George Q. Cannon this 23d day of November, A. D. 1872.

GEORGE R. MAXWELL,
*Contestant.*

At the opening of the present session the contestee, holding a certificate in the usual form of due election, presented himself at the bar of the House, and was permitted by the House, after argument (see record of first day's proceedings), to be sworn in and to take his seat as a Delegate from the Territory of Utah, without qualification or limitation.

The case comes before the committee like ordinary cases of contested elections, under a general order embracing several cases.

It was not claimed on the argument that Maxwell received a majority of the votes actually cast, although it was maintained that gross irregularities existed in the manner of conducting the election and making up the returns. The testimony tends to bear out this position as to some localities, but clearly fails to show that the contestant received a majority of the legal votes.

The case must therefore be considered upon the assumption that Cannon, the sitting member, received a majority of the suffrages of the Territory, and was duly returned.

This remits us to the consideration of the other question raised by the contestant, and stated in the brief of his counsel in the following words, to wit:

George Q. Cannon, the sitting Delegate, is not qualified to represent said Territory, or to hold his seat in the Forty-third Congress, and for cause of disqualification we say it is shown by the evidence that he, at and before the day of the election, to wit, on the 5th day of August, 1872, was openly living and cohabiting with four women as his wives in Salt Lake City, in Utah Territory, and he is still so living and cohabiting with them;

And to the further consideration of the question whether in any event the contestant can be admitted to the seat he claims.

The question raised in the specification of contestant's counsel, and above transcribed, is a grave one, and unquestionably demands the consideration of the House. This committee, while having no desire to shrink from its investigation, finds itself confronted with the question of jurisdiction under the order referring the case.

The Committee on Elections was organized under and pursuant to article 1, section 5, of the Constitution, which declares:

"Each house shall be the judge of the elections, returns, and qualifications of its own members." (See Manual, page 96.)

The first standing committee appointed by the House of Representatives was the Committee on Elections. It was chosen by ballot, on the 13th day of April, 1789, and from that time to this, in the vast multitude of cases considered by it, with a few unimportant exceptions, in

which the point seems to have escaped notice, the range of its inquiries has been limited to the execution of the power conferred by the above provision of the Constitution.

What are the qualifications here mentioned and referred to the Committee on Elections? Clearly, the constitutional qualifications, to wit, that the claimant shall have attained the age of twenty-five years, been seven years a citizen of the United States, and shall be an inhabitant of the State in which he shall be chosen.

The practice of the House has been so uniform, and seems so entirely in harmony with the letter of the Constitution, that the committee can but regard the jurisdictional question as a bar to the consideration of qualifications other than those above specified mentioned in the notice of contest and hereinbefore alluded to.

It being conceded that the contestee has these qualifications, one other inquiry only under this head remains, to wit: Does the same rule apply in considering the case of a Delegate as of a member of the House? This question seems not to have been raised heretofore.

The act organizing the Territory of Utah, approved September 9, 1850, enacts that the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable.

It was said on the argument that the Constitution cannot be extended over the Territories by act of Congress, and the views of Mr. Webster were quoted in support of this position.

We do not deem it necessary to consider that question, because it will not be denied that Congress had the power to make the Constitution a part of the statutory law of the Territory as much as any portion of the organic act thereof. For the purposes of this inquiry, it makes no difference whether the Constitution is to be treated as constitutional or statutory law. If either, it is entitled to be considered in disposing of this case.

Now, while it would be entirely competent for Congress to prescribe qualifications for a Delegate in Congress entirely unlike those prescribed in the Constitution for members, it seems to us, in the absence of any such legislation, we may fairly and justly assume that by making the Constitution a part of the law of the Territory, Congress intended to indicate that the qualifications of the Delegate to be elected should be similar to those of a member. It would seem to be to that extent an instruction to the electors of the Territory, growing out of the analogies of the case.

We conclude, therefore, that the question submitted to us, under the order of the House, comes within the same principles of jurisdiction as if the contestee were a member instead of a Delegate.

This position, it will be observed, does not conflict with the right of the House to refer a preliminary inquiry to this committee as to the disqualification of a member or Delegate to be sworn in and take his seat prior to the oath being administered. In such case the reference is special, and the jurisdiction of the committee follows the order of the House.

The case of Samuel E. Smith against John Young Brown, in the Fortieth Congress, is in point. That case was referred to the Committee on Elections, before the contestee was sworn in, to ascertain and report whether he had committed any of the acts specified in the law of July 2, 1862, which he was required to swear he had not committed, before entering on the duties of a Representative.

It was a preliminary inquiry, made under a special order of the House,

and might have been executed as properly by the Judiciary Committee or by a special committee. It did not relate in the remotest manner to the election, returns, and qualifications of the claimant under the Constitution.

The contestee in this case having been sworn in and admitted to his seat, and his name officially entered upon the roll of Delegates, we think he can be reached only under the exercise of the power of expulsion, which it is competent for the House to set in motion by a special order of reference.

The other question, which relates to the rights of the contestant, we shall consider but briefly. The contestant insists upon his right to the seat as the minority candidate, in case the House shall ultimately determine to unseat or expel the sitting member.

The counsel for the contestant referred the committee to the case of A. S. Wallace *vs.* W. D. Simpson, in the Forty-first Congress, in support of the claim of the contestant. A critical examination of the case will show that it cannot be considered as authority for the doctrine. We quote from the brief of contestee's counsel:

The subcommittee who had charge of the case of Wallace *vs.* Simpson, consisted of Mr. Cessna, of Pennsylvania, Mr. Hale, of Maine, and Mr. Randall, of Pennsylvania, all members of the present House. The report was drawn and submitted by Mr. Cessna. And the doctrine and argument of the report, so far as this point is concerned, were opposed by Messrs. Hale and Randall, the other members of the subcommittee. On this point the report stated the individual opinion of Mr. Cessna, an opinion in which he stood alone.

On Friday, May 27, 1870, which was private-bill day, Mr. Cessna, a few minutes after the reading of the Journal had been completed, called up the report, and, without a word of debate, secured the immediate adoption of the resolution awarding the seat to Mr. Wallace, and moved and carried the motion to reconsider and lay on the table. The attention of the House was not attracted to the proceeding until Mr. Wallace presented himself to receive the oath. Then commenced a scene of very great confusion. Mr. Randall indignantly repudiated that portion of the report upon which the counsel for the contestant relies in the case now before the committee. Mr. Dawes also repudiated it. So did Mr. Brooks, Mr. Burr, and others. No Representative defended it, except Mr. Cessna himself, who frankly stated the attitude of his colleagues on the committee.

These were Mr. Cessna's exact words, to be found on page 3863 of volume 79 of the Congressional Globe:

"There is one thing which, perhaps, I should have stated to the House, and which I state now. The report in this case is based upon three propositions. The first is this: that when one of two candidates is ineligible, the votes given for him are of no effect, and the other candidate is elected. I desire to state to the House that both of my colleagues on the committee (Mr. Hale and Mr. Randall) dissent from the first proposition contained in the report, and that, so far as anybody is to be bound by that first proposition, there is no one to be bound by it but myself."

Mr. Hale, of Maine, was absent from the House when this case was called up. His relation to the report can readily be ascertained.

Smarting under a sense of injustice, many Representatives were casting about for some parliamentary device by which the House might, notwithstanding the motion to reconsider had been laid on the table, yet have a fair vote on the question of the admission of Mr. Wallace. With what success, the following literal extract from the Globe will show:

"The SPEAKER. The Chair has been appealed to, conversationally, by several gentlemen, to indicate some method by which a record can be made in this case. The Chair would suggest that the simplest mode would be to allow the gentleman from Pennsylvania (Mr. Randall) to move to reconsider the vote by which the resolution of the Committee of Elections was adopted, and then the other gentleman from Pennsylvania (Mr. Cessna could move to lay that motion to reconsider on the table.

"Mr. RANDALL. Then I will make that motion.

"The SPEAKER. It requires unanimous consent. Is there objection?

"Mr. CESSNA. I object.

"Mr. BROOKS, of New York. There is no possible thing to be done but to have this man sworn in.

"The SPEAKER. When the House has declared by a vote, whether *viva voce*, by tellers, or by yeas and nays, that a person is entitled to a seat here, and the motion to reconsider has been laid on the table, it is then as much the right of the member thus declared entitled

to his seat to be sworn in as it is the right of the gentleman from New York (Mr. Brooks) to speak upon any question before the House.

"Mr. BROOKS, of New York. If he shall be sworn in will it be as a member elected in South Carolina or a member elected by this House?

"The SPEAKER. The member from South Carolina will now present himself to be sworn in.

"Mr. ALEXANDER S. WALLACE then presented himself, and took the oath of office prescribed by the act of Congress of July 2, 1862."

Not only is this not an authority for the doctrine contended for, but the cases establishing the opposite doctrine are so numerous and uniform as to absolutely remove the question in this country from the realm of debate.

The case of Smith *vs.* Brown (2 Bartlett, 395) is the leading case in the House of Representatives. It was reported from the Committee on Elections by the chairman, Mr. Dawes, on the 28th of January, 1868. His exhaustive discussion of the subject will be found on pages 402–405 of the second volume of Bartlett's Contested-Election Cases. He refers to the case of Ramsey *vs.* Smith (Clarke & Hall, 23), argued by Mr. Madison at the first session of the First Congress; and to the cases of Albert Gallatin in the Senate in 1793, Philip Barton Key in the House in 1807, John Baily in the House in 1824, James Shields in the Senate in 1849, and John Young Brown in the House in 1859. He also reviews the British authorities and the opinion expressed in Cushing's Treatise. And he closes the discussion by declaring that "the law of the British Parliament in this particular has never been adopted in this country, and is wholly inapplicable to the system of government under which we live." I ask the committee to read so much of the report in this case as relates to the point now under consideration. It will be found on pages 402–405 of the second volume of Bartlett's Contested-Election Cases.

In the case of Zeigler *vs.* Rice (2 Bartlett, 884), *which is later than Wallace vs. Simpson*, the committee decided this precise point. I will give their conclusions in their own words, to be found on the 884th page of volume 2 of Bartlett's Contested-Election Cases:

"Thus it will be seen that, according to the contestee's own statement, he had entered into an agreement to recruit for the rebel army; was on his way to carry out fully his undertaking, when he was captured, and claimed protection as a rebel officer when captured. The committee are well satisfied that the acts of contestee were well understood by the voters of said district at the time contestee was voted for; *but do not agree with contestant that, as contestee was ineligible, the candidate who was eligible is entitled to the seat.*"

And they recommended a resolution unseating Mr. Rice, and declaring the seat vacant. But the House refused even to evict Mr. Rice. On the contrary, by the adoption of a substitute for the resolution, without a division, Mr. Rice was declared entitled to his seat.

The proceedings will be found on page 5447 of the 80th volume of the Globe.

In the Fortieth Congress, Simeon Corley, of South Carolina, P. M. B. Young, and Nelson Tift, of Georgia, and R. R. Butler, of Tennessee, and in the Forty-first Congress, Francis E. Shober, of North Carolina, members of the House, were relieved of their political disabilities long after their election, and yet when so relieved were admitted to their seats in the House. All were ineligible when elected, and yet in no case was the election treated as void.

In the case of Joseph C. Abbott, in the Senate of the Forty-second Congress, the doctrine asserted by the counsel of the contestant was fully considered, and was repudiated by the Senate.

It is probable that there never was and never will be, in this country, another discussion of the subject so exhaustive as that which it received in this case. The English authorities were all presented, and very few, if any, of the American decisions, whether judicial or parliamentary, escaped the scrutiny of the Senators who submitted the majority and minority reports, which were printed together in the Senate Report No. 58 of the second session of the Forty-second Congress.

Your committee, therefore, recommend the adoption of the following resolutions:

*Resolved* (1), That George R. Maxwell was not elected, and is not entitled to a seat in the House of Representatives of the Forty-third Congress as Delegate for the Territory of Utah.

*Resolved* (2), That George Q. Cannon was elected and returned as a Delegate for the Territory of Utah to a seat in the Forty-third Congress.

AMENDMENT PROPOSED TO BE SUBMITTED BY MR. GERRY W. HAZELTON TO THE REPORT OF THE COMMITTEE ON ELECTIONS IN THE CASE OF MAXWELL vs. CANNON.

APRIL 30, 1874.

Whereas George R. Maxwell has prosecuted a contest against the sitting member, George Q. Cannon, now occupying a seat in the Forty-third Congress as Delegate for the Territory of Utah, charging, among other things, that the said Cannon is disqualified from holding, and is unworthy of, a seat on the floor of this House, for the reason that he was at the date of his election, to wit, on the 5th day of August, 1872, and prior thereto had been, and still is, openly living and cohabiting with four women as his wives under the pretended sanction of a system of polygamy, which system he notoriously indorses and upholds, against the statute of the United States approved July 1, 1862, which declares the same to be a felony, to the great scandal and disgrace of the people and the Government of the United States, and in abuse of the privilege of representation accorded to said Territory of Utah, and that he has taken and never renounced an oath which is inconsistent with his duties and allegiance to the said Government of the United States; and whereas the evidence in support of such charge has been brought to the official notice of the Committee on Elections: Therefore,

*Resolved*, That a committee be appointed, of the same number as the standing committees of the House, to inquire into the said charge, and report to the House as to the truthfulness thereof, and to recommend such action on the part of the House in the premises as shall seem meet and proper.

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VIEWS OF THE MINORITY.

I dissent from the conclusions at which the majority of the committee have arrived. I agree fully with a majority of the committee that the proof shows that the contestant, George R. Maxwell, was not elected; and that, while there were undoubtedly, at some of the precincts or voting-places in the Territory, frauds perpetrated and undue influences used by the political or partisan friends of the sitting Delegate, he received an overwhelming majority of the legal votes cast at the election, and was duly elected a Delegate from the Territory of Utah in the Forty-third Congress.

As the result of the investigation of the case, the majority of the committee report for the action of the House, and recommend the adoption of, a resolution declaring that the contestant, George R. Maxwell, is not entitled to a seat as a Delegate, in which action I fully concur; and the majority also report for the action of the House, and recommend the adoption of, a resolution to the effect that George Q. Cannon was duly elected, but fail to go further, and declare that the said Cannon is entitled to his seat as a Delegate from the Territory of Utah.

To this view of the case taken by the majority, which induced the majority, after ascertaining that the sitting Delegate, Cannon, was duly elected and returned, to stop short of recommending the adoption of a resolution declaring that he was entitled to the seat as the Delegate representative of the people of the Territory of Utah, I cannot assent, for the following reasons:

The majority of the committee have failed and declined to report a resolution to the effect that George Q. Cannon was entitled to the seat, upon the ground that he was disqualified, by reason of the fact that he

was the husband of more than one wife, and, as is assumed, guilty of a violation of the act of Congress which denounces a penalty of fine and imprisonment against any person in any of the Territories of the United States who preaches bigamy or polygamy.

The committee, under and in pursuance of a long course of decisions of the House, had a plain duty to perform—that of ascertaining and reporting to the House which, if either, of the parties to this contest was elected and returned, and as to the qualifications of the party found to be so elected and returned.

If the committee found, as they did, that Mr. Cannon was duly elected and returned, and that he had the qualifications which the Constitution of the United States requires shall be possessed by members of the House, it follows logically that there was one other duty for the committee to perform, and that was to report a resolution declaring that he was entitled to the seat.

It is admitted in the report, and the fact has not been and is not denied, that Mr. Cannon possesses the constitutional qualifications, unless the qualifications of a Delegate in Congress from a Territory differ from the qualifications fixed by the Constitution for a member of the House.

There can be no sufficient reason assigned for the position that the qualifications are any different. The Constitution does not in express terms prescribe the qualifications of a Delegate in Congress. It *does* prescribe those of a member of the House of Representatives, and of course the constitutional provision on the subject is a limitation on the right or power of the House to annex or fix any other qualifications of a Representative in Congress, notwithstanding the Constitution has clothed each house of Congress with the power to judge of the election, returns, and qualification of its members.

The qualifications of Representatives in Congress are prescribed by the second section of the first article of the Constitution of the United States.

They are: first, that they shall have attained the age of thirty-five years; second, that they shall have been seven years citizens of the United States; and, third, that they shall when elected be inhabitants of those States in which they shall be chosen. No other qualifications are prescribed in the Constitution.

If the Constitution of the United States had vested anywhere the power to prescribe qualifications of Representatives in Congress additional to or different from those prescribed by the Constitution itself, it is obvious that this power would have been conferred either upon Congress ,or upon the House alone, or upon the States.

In the history of our government it has never been claimed that the House of Representatives, acting alone, possessed the power to add to or change the qualifications of its members. The vain attempt made by Mr. Randolph, in the case of Barney *vs.* McCreery, in the Tenth Congress, to vindicate a claim of that kind in favor of the States, signally failed, and has never been repeated in the House.

Mr. Justice Story, in his discussion of the subject of the qualifications of Representatives in Congress, says that it would seem but fair reasoning, upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office it meant to exclude all others, as prerequisites, and that from the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others. And although it is certain that the letter of those constitutional provisions which relate to Representatives from the States does not apply exactly to the cases of Delegates

from the Territories, still it is just as certain that their spirit does. A Delegate cannot be admitted who is not a citizen of the United States, simply because the spirit of the Constitution forbids it. The Constitution, applied to the case, so far as in the nature of the things it is applicable, forbids it. And this covers the whole ground. For precisely the same reasons Delegates cannot be admitted who are otherwise disqualified under the Constitution. For precisely the same reasons no qualifications or disqualifications can be prescribed other than those fixed by the Constitution itself, without a violation of the spirit of that instrument. Of course, the House may have the physical power to exclude a Delegate who has the qualifications prescribed in the Constitution for Representatives, just as it might have the physical power to exclude a Representative so qualified. But it has no such power warranted by the spirit of the Constitution. While in many respects the Delegate differs from the Representative, in this respect they are alike. While in many respects provisions of the Constitution relating to Representatives are not applicable to Delegates, in this respect they *are applicable.*

We search in vain in the act organizing the Territory of Utah, in the act providing for the election of a Delegate to Congress from that Territory, or in any other act of Congress, for any provision fixing the qualifications of the Delegate, or providing for disqualification on account of any cause whatever.

If it be assumed, for the sake of argument, that, under the Constitution of the United States, Congress has the right to punish polygamy in the Territories by declaring that persons duly convicted thereof shall be ineligible to office, yet Congress has done no such thing. By the act of July 1, 1862, it is provided that persons guilty of bigamy in the Territories shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years. But there is no statute of the United States which makes ineligibility to office a part of the punishment for bigamy or polygamy committed in the Territories or elsewhere.

The precedents of the House are in accordance with this construction of the Constitution. There has been no precedent since the organization of the government which would justify, any more than would the Constitution itself justify, the House acting as the judges of the election, returns, and qualifications of Mr. Cannon, in a decision to deprive him of his seat on the ground that he has violated the law prohibiting polygamy in the Territories of the United States.

The case of B. F. Whittemore, in the Forty-first Congress, is relied upon as an authority for the refusal to admit a Representative elect on other grounds than mere constitutional disqualifications. But a critical examination of that case will show that the House only decided that a Representative who had by resignation escaped expulsion for an infamous crime from *that House* should not be readmitted to the *same House.*

The case of Mr. Matteson, in the Thirty-fifth Congress, relied upon in argument before the committee, was a case arising, not under the clause of the Constitution which makes each house the judge of the election, returns, and qualification of its members, but under that clause which confers the power of expulsion.

The line of demarkation between these two great powers of the House, the power to judge of the election, returns, and qualifications of its members by a mere majority vote, and the power to expel its members by a two-thirds vote, is clear and well defined. That line is not to be obliterated. It would be necessary to preserve it, even though its obliteration might seem to threaten no disasters, even though its maintenance might

promise no benefits to the House, to the people, or to the Constitution. For this barrier is raised by the Constitution itself.

The framers of the Constitution of the United States, in prescribing or fixing the qualifications of members of Congress, must be presumed to have been dealing with the question with reference to an obvious necessity for uniformity in the matter of the qualifications of members, and with a jealous desire to prevent, by the action of either house of Congress, the establishment of other or different qualifications of members.

It was appropriate and proper, in fact necessary, that the power should be given to each house to judge of the election, returns, and qualifications of its members; that is, to judge of *the constitutional* qualifications of its members.

The exercise of this power requires only a majority vote.

But the House possesses another power, to decide who shall and who shall not hold seats in that body. It is altogether distinct, in origin and character, from that to which I have just referred. It is the power of expulsion, which requires a two-thirds vote for its exercise. It is conferred by the following clause of the Constitution:

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

This power of expulsion conferred by the Constitution on each house of Congress was necessary to enable each house to secure an efficient exercise of its powers and its honor and dignity as a branch of the national legislature.

It was too dangerous a power to confer on either house without restriction, and hence it was expressly provided in the Constitution that there must be a concurrence of two-thirds of the members to expel.

Under this power, guarded as it has been by the constitutional provision requiring a vote of two-thirds, there have been but a very few instances of expulsion since the organization of the government, and it would seem that a power so rarely exercised does not require the agency of a standing committee.

The cases involving its exercise have usually been referred to select committees.

The case of Mr. Benjamin G. Harris, of Maryland, in the Thirty-ninth Congress, may be cited to show that the House has not been inclined, even in so strong a case as that was, to regard a member duly elected by the people of his district as disqualified under the circumstances, even under proceedings looking to his expulsion.

Mr. Harris was a Representative in the Thirty-ninth Congress, his term commencing on the 4th March, 1865.

On the 2d of May, 1865, he was arraigned before a military commission, and convicted of violating the 56th Article of War, by harboring and protecting rebel soldiers, furnishing them with money, inciting them to continue in the rebel army and to make war on the United States; declaring his sympathy with the enemy and his opposition to the government of the United States.

On May 12, 1865, he was found guilty, and sentenced as follows:

And the court do therefore sentence the accused, Benjamin G. Harris, as follows: To be forever disqualified from holding any office or place of honor, trust, or profit under the United States, and to be imprisoned for three years in the penitentiary at Albany, New York, or at such other penitentiary as the Secretary of War may designate.

On the 31st day of May, 1865, this sentence was approved and confirmed, and also remitted by President Johnson, and Mr. Harris was released from imprisonment. At the commencement of the session, in December, 1865, Mr. Harris, upon taking the iron-clad oath, was admitted to his seat in the House of Representatives.

On the 19th of December, 1865, a resolution reciting the fact of his conviction, and the fact that he expressed his regret that the assassination of President Lincoln came too late to be of any use to the rebels, and referring the matter to the Committee on Elections, with directions to inquire into the facts of the case, and to report such action as the committee should recommend, was adopted.

The committee never made any report, and the House never took any further action in the case.

On the 15th of May, 1856, Mr. Knowlton introduced a resolution referring to the homicide of Thomas Keating, at Willard's Hotel, on the 8th of the same month, by Mr. Herbert, a Representative from the State of California, and instructing the Committee on the Judiciary to take the case into consideration, with power to send for persons and papers, and to report what action the House should take in the premises.

The House refused to entertain the proposition. This all occurred at the first session of the Thirty-fourth Congress. At the third session a petition was sent to the House signed by 2,232 citizens of California, declaring their belief that, in the murder of Keating, Mr. Herbert had committed an act entirely without justification, had disgraced his high position, and that he could no longer satisfactorily represent the will of his constituents in the House of Representatives, and asking that, in the event of his acquittal by the court, he should be expelled from the House.

This petition was referred to the Committee on Elections. On the 24th day of February, 1857, Mr. Colfax submitted the report of the committee. The committee, without making any recommendation, concluded their report in these words:

> Your committee, therefore, report the character of the petition, the statements embodied in it, and the number of its signers, that the House may determine what action under the circumstances they may deem just to all concerned.

The House took no action whatever in the case, and Mr. Herbert continued to be a member of the House until the expiration of the Thirty-fourth Congress. He voted at the very last call of the yeas and nays on the 3d day of March, 1857.

The cases which I have referred to, and others examined, have convinced me, first, that the House, in cases involving the election, returns, and qualifications of members, has heretofore rigidly and wisely adhered to the policy of declining to fix or of attempting to fix any other qualifications for membership in this House outside of those fixed by the Constitution.

Second. That the power to expel a member by a two-thirds vote is separate and distinct from, and independent of, the power to judge of the election, returns, and qualifications of members.

Third. That the failure of the committee in this case, after that committee has found that the sitting Delegate from Utah has been duly elected and returned, to report that he is entitled to his seat, is unauthorized in principle or by precedent, and dangerous, in so far as it tends to break down the distinction between the jurisdiction of the House in such a contest as the present one and the jurisdiction of the House by a two-thirds vote to expel a member from the House.

I therefore submit for the action of the House the following resolution, to be offered in lieu of the second resolution reported by the majority of the committee:

*Resolved*, That George Q. Cannon was duly elected and returned as Delegate from the Territory of Utah, and is entitled to a seat as a Delegate in the Forty-third Congress.

HORACE H. HARRISON.

## SHERIDAN vs. PINCHBACK.—REPRESENTATIVE AT LARGE FROM LOUISIANA.

Certificates of election issued by the contestant, as acting governor of Louisiana, certifying to his own election, and a supplemental certificate of later date relative to the record on file in the office of the secretary of state, signed by Governor Kellogg. Contestee also presented certificates of election signed by Governor Warmoth.

A governor's certificate is regarded as the official declaration of an official canvass of the vote.

Question as to which of the State governments was legally in power.

Committee recommended that, as the evidence is not sufficient to establish the right of either to a seat in the House as a Representative at large from the State of Louisiana, Mr. Sheridan have leave to amend his notice of contest; and that Mr. Pinchback have leave to answer such amended notice within a specified time, and the evidence of the respective parties be taken under the existing laws of Congress in such cases made and provided.

Majority and minority report submitted.

Minority report rejected June 9, 1874: Yeas, 72; nays, 145; not voting, 72.

Majority report and resolutions adopted.

Authorities referred to: Cushing's Law and Practice on Legislative Assemblies, secs. 44, 210, 111, 745, 17, 18, 19; Senate Report No. 457, 42d Congress, 3d sess., pages 76, 77; Senate Report No. 467, 42d Congress, 3d sess.; Ex. Doc. No. 91, 42d Congress, 3d sess.; Luther *vs.* Borden, 7 How., S. C. Rep., 30; Greenleaf on Evidence, vol. 1, sec. 491; Lewis's Methods and Reasonings in Politics.

May 19, 1874.—Mr. H. B. Smith, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the contested-election case of Sheridan vs. Pinchback, from the State of Louisiana, submit the following report:*

Each of the parties claims a seat in this House as Representative at large from the State of Louisiana.

The case is referred upon the merits. No testimony has been taken by either party. The counsel for Mr. Pinchback rests his case upon the certificate issued by himself as acting governor, on the 30th day of December, 1872, which is as follows:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
*New Orleans, December* 30, 1872.

Be it known that, at an election begun and held on the 4th day of November, A. D. 1872, for member of Congress, Pinckney B. S. Pinchback received sixty-eight thousand nine hundred and forty-seven votes, and George A. Sheridan received fifty-eight thousand seven hundred votes.

Now, therefore, I, P. B. S. Pinchback, acting governor of the State of Louisiana, do hereby certify that Pinckney B. S. Pinchback received a majority of the votes cast at said election, is duly and lawfully elected to represent the State at large, State of Louisiana, in the Forty-third Congress of the United States.

Given under my hand and the seal of State this 30th day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

By the acting governor. P. B. S. PINCHBACK.

E. B. MENTZ, *Assistant Secretary of State.*

Since this case was submitted, a supplemental certificate of Mr. Pinchback's election, issued by Governor Kellogg, has been referred by the House to your committee, which is as follows:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
*New Orleans, March* 11, 1874.

Whereas I have been given to understand that doubts have arisen as to the validity of the credentials of Hon. P. B. S. Pinchback to a seat in the House of Representatives, as Repre-

sentative at large from the State of Louisiana, because said credentials were signed by himself while acting governor of the State of Louisiana, I do certify that it appears, from the records and returns of the votes given at the election on November 4, 1872, for member of Congress at large for Louisiana, now of record in the office of the secretary of state of the State of Louisiana, that Hon. P. B. S. Pinchback was duly elected by a majority of the votes cast at said election as Representative at large for the State of Louisiana in the House of Representatives of the Congress of the United States and is duly and legally entitled to his seat as such Representative.

In testimony whereof I have caused the seal of the State of Louisiana to be affixed to this certificate, under my own hand, and countersigned by the secretary of state, this 11th day of March, A. D. 1874, and of the Independence of the United States the 98th.

WM. P. KELLOGG,
*Governor of Louisiana.*

P. G. DESLONDE,
*Secretary of State.*

This comprises the whole of Mr. Pinchback's case as presented to your committee. The affidavit of Mr. Blanchard and the report of the chief supervisor of elections for Louisiana, of which mention will be made below, were offered as rebutting evidence by Mr. Pinchback's counsel (in case the committee should decide to receive the testimony taken by the Senate Committee on Privileges and Elections offered by Mr. Sheridan), and were not objected to by Mr. Sheridan.

Within the time after the issuing of the first certificate prescribed by the law of Congress, regulating the conduct of contested-election cases, Mr. Sheridan duly served upon Mr. Pinchback a notice of contest as follows:

NEW ORLEANS, LA., *December* 30, 1872.

Hon. P. B. S. PINCHBACK:

I hereby notify you that I shall contest your claim or right to a seat as Congressman at large from the State of Louisiana to the Forty-third Congress for the following reasons:

1st. The board which declared you elected was not a legal board.

2d. It was not in possession of the returns of the election of November, 1872, and could not therefore legally declare you elected.

3d. The lawful returns of the election of November, 1872, show my election as Congressman at large by a majority of more than ten thousand votes.

Very respectfully,

GEO. A. SHERIDAN.

To this notice Mr. Pinchback made no answer.

FIRST.

Is Mr. Pinchback shown entitled upon the merits to this seat?

Your committee think not. Mr. Pinchback's original certificate, it was conceded, and Governor Kellogg's supplemental certificate, it is to be assumed, were issued upon the pretended canvass by the returning-board known as the "Lynch board." Assuming that the Lynch board was the legal returning-board, and waiving the consideration of the effect of Mr. Pinchback's default in making no response to Mr. Sheridan's notice of contest, your committee are of opinion that the fact that the Lynch board never had possession of the election returns, and therefore never canvassed them, has become a part of the political history of the country. They hold this fact to be so notorious that the House ought to take legislative notice of it in this contest, and may take like notice of it for the purpose of any appropriate legislation. They report, therefore, that upon the case as presented to your committee Mr. Pinchback is not shown to be entitled to a seat in this House.

SECOND.

Upon the case made, ought Mr. Sheridan to be seated?

He served upon Mr. Pinchback, in due time, his notice of contest, to

which Mr. Pinchback never made answer. Nevertheless his case is no stronger in the judgment of the committee than if no one were contesting his right; and the committee had been instructed by order of the House to inquire whether he was elected. He has presented no proof of his election other than his certificate and the printed volume of testimony taken in the last Congress by the Senate Committee on Privileges and Elections in the contest between Ray and McMillan for a seat in the Senate.

Mr. Sheridan's certificate is as follows:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
*New Orleans, December* 4, 1872.

This is to certify that at a general election held in this State on the 4th day of November, A. D. 1872, George A. Sheridan received sixty-four thousand and sixteen votes, and P. B. S. Pinchback received fifty-four thousand four hundred and two votes.

I therefore hereby declare George A. Sheridan duly elected to represent the State of Louisiana as Congressman at large in the Forty-third Congress of the United States.

Given under my hand and the seal of the State this 4th day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

H. C. WARMOTH,
*Governor of Louisiana.*

JACK WARTON,
*Secretary of State.*

Mr. Sheridan claims that the testimony taken by the Senate committee shows his election, and that the House ought to receive it and give it like force and effect as if it had been taken in the pending contest.

First. As to the certificate. Waiving the question whether in any case a governor's certificate alone is sufficient proof *upon the merits* of title to a seat in the House, it seems clear to your committee that its effect as proof rests upon the presumption that it is the official declaration of an official canvass of the votes.

But Mr. Sheridan concedes that on the 4th day of December, when his certificate was issued, the Congressional vote had not been canvassed by any returning-board whatever. This fact was also proved before the Senate committee (page 584).

Second. Mr. Sheridan's case, then, rests upon the validity and effect of the return of the Foreman board, found on pp. 82 and 83 of the Senate report, for there is no other proof of his election. This is the only board which has returned Mr. Sheridan as elected to Congress. The history of the several returning-boards will be found on page 6 *et seq.* of the Senate report. There were—

1. The board in office on the day of the election.
2. The Wharton board acting with Governor Warmoth after the split in the board.
3. The Lynch board, held by the State courts to be the legal returning-board under the old election law, in place of the Wharton board.
4. The De Feriet board, appointed by Governor Warmoth ("to escape the clutch of Judge Durell") under the new election law, approved November 20, 1872.
5. The Foreman board, elected by the McEnery senate, December 11, 1872, under the new election law, in place of the De Feriet board, appointed during the recess of the legislature.

The House must determine, then, whether this volume of testimony, taken by the Senate Committee on Privileges and Elections, is competent evidence in this contest (for there was no other proof before your committee of the return of any board).

In Cushing's Law and Practice of Legislative Assemblies, the author states:

143. The rules of evidence by which courts of justice are governed, and by which their proceedings are regulated, in the investigation of the cases which come before them, make a part of the civil right of the citizen as much as the rules regulating the acquisition, the enjoyment, or the transmission of property, or which govern any other matter of civil right; and when a question of the same nature is pending in the legislature, involving private interests only, no good reason can be assigned why the rules of evidence should not be the same. It would seem reasonable, therefore, to regard it as a rule of parliamentary practice that when the private interests of individuals are the subject of investigation, or, in other words, where the investigation is a judicial one, and so far as it is of that character, the same or analogous rules of evidence should be applied as would be observed in the investigation of similar interests in any of the courts of law or equity; and this appears to be the rule which has prevailed in modern times. On the occasion of what is called the Queen's trial, which took place on a bill of pains and penalties pending in the House of Lords, the rules of evidence were strictly observed.

44. Where the subject under investigation is not of a judicial nature, no other rule can be given as to the kind or degree of evidence to be required than that it should be such as to satisfy the mind and conscience of individual members, and afford them sufficient ground for belief and action in reference to their own private affairs.

The same author says in a preceding chapter:

210. The same general rules by which courts of law are governed in regard to the evidence in proceedings before them prevail also in the investigation of cases of controverted elections; but inasmuch as a legislative assembly, touching things appertaining to its cognizance, is "as well a council of state and court of equity and discretion as a court of law and justice," the legal rules of evidence are generally applied by election committees, more by analogy and according to their spirit than with the technical strictness of the ordinary judicial tribunals.

Again, the author says:

742. * * * Between the highest kind of this evidence and the lowest of that before alluded to there is, of course, an infinite diversity of degrees of proof, ranging from the one extreme to the other, all of which are receivable and entitled to consideration in parliamentary proceedings according to the nature of the subject-matter to which the evidence is to be applied.

111. *Of the evidence of common fame.*

745. In the earlier periods of parliamentary history, when it was more common than it has since been to institute inquiries into the conduct of high officers of state, the evidence of common fame or report was admitted as sufficient ground for an inquiry, though not for a condemnation, provided it "was a general report or voice of neighborhood," and not a mere "rumor, which is a particular assertion from an uncertain author;" and provided, also, that it was not a "reputation or fame upon a generality," but "upon a particular specification." The evidence of common fame, thus defined and restricted, seems proper to be received for the purpose merely of founding an inquiry upon it; and such seems to be the effect which has been attributed to it in more recent times.

747. In addition to what may properly be called evidence, namely, that which is obtained by means of an inquiry instituted by the House, or brought forward by a party, all the information of every description which in any way comes into the possession of the house may be regarded as evidence. Messages from the executive, either at the commencement or in the course of the session, documents from the same source, returns from public officers or commissioners, either in pursuance of law or of the orders of the house, constitute evidence upon which legislative proceedings may be founded. In regard to the credit which may be due to evidence of this sort, no general rule can be given. The House must judge in each individual case.

748. It frequently happens that documents received by one house from extraneous sources are communicated to the other, either at its request or voluntarily on the part of the former. Such papers are, of course, to be judged of by the house to which they are sent according to their nature and to the source from which they emanated; they derive no additional weight from the medium through which they come.

749. The minutes of the evidence taken by one house, upon which a bill or other measure sent to the other for concurrence is founded, are not unfrequently sent to the latter either with the bill or measure in question or at the request of that house. In the latter case the minutes so sent become evidence in the house to which they are sent. In the latter they are looked upon not as evidence which may be read and considered as such, but only in the light of an index or memorandum of the names of witnesses and of the statements made by them to assist the house in its examination.

This volume, which Mr. Sheridan offers in evidence, is Senate Report No. 457, third session Forty-second Congress.

Neither Mr. Pinchback nor Mr. Sheridan was directly a party to the controversy which was pending in the Senate and in which this investigation was had. Nor was the question as to which of them had been elected Representative at large from the State of Louisiana directly or indirectly before the Senate committee.

Your committee receive the President's message to the last Congress on Louisiana affairs, and the report and accompanying exhibits of the chief supervisors of elections in that State; they also receive this volume of testimony taken by the Senate committee, "for consideration of the nature and degree" of the evidence it contains and "of the subject-matter to which the evidence is to be applied," or, in the phrase of courts, "for what it is worth."

There is not a precinct or parish return in the entire volume, nor is there parol testimony of the vote which either claimant received. Your committee are satisfied, however, that it comprises correct copies of the returns made by the returning-boards known as the Lynch and Foreman boards.

THIRD.

Is the Foreman return, then, sufficient proof upon the merits of Mr. Sheridan's right to this seat?

This return gives Mr. Sheridan 65,016 votes against 54,402 for Mr. Pinchback.

For the purposes of this question, let it be assumed that the vote was to be canvassed under the new election law, approved by Governor Warmoth November 20 (p. 62 Senate Report), more than two weeks after the election, and not under the old law (p. 47), under which the election had been held and the parish returns made and the canvassing board organized for entering upon its duties (as held by the supreme court of Louisiana.)

And let it be further assumed that the McEnery legislature was the lawful legislature of Louisiana, and that the Foreman board, elected by the McEnery senate, was the lawful returning-board for canvassing these returns.

Nevertheless, your committee are of opinion that the correctness of these returns is challenged by evidence, which shows *probable cause*, abundantly sufficient (certainly more so than common fame, upon which the House might act) to put the House upon inquiry before these returns are accepted as conclusive.

A.

On pages 75 and 76 of the Senate report it is proved that the Foreman board was elected by the McEnery senate on the 11th day of December, and that they received these returns, of which there was such an "immense mass as was perfectly fearful and would make a man's hair stand on end to look at them" (p. 897), on the evening of the 11th December. Nevertheless, they canvassed them during the evening and made their certificates, bearing that date (pp. 83, 88, 95.)

B.

These returns are signed by O. F. Hunsacker and S. M. Todd.

The President's message on Louisiana affairs (Ex. Doc. No. 91, third

session Forty-second Congress) is, within the authority above quoted, properly before your committee and the House, aside from the fact that it was in evidence before the Senate committee (pp. 180, 305).

On page 123 of this document it is charged that the signatures of Hunsacker and Todd are forgeries, and that they have sworn that they did not sign the return on account of the frauds it contained.

C.

Mr. Southmayd was a McEnery man and a member of the Foreman board (Senate Report, p. 140). On page 897 he testifies to his belief that there were from 25,000 to 30,000 fraudulent names on the registration-books.

D.

By the census tables of 1870, population, p. 619, the male white population of Louisiana upward of twenty-one years of age is 87,066; black, 86,913. The same table discloses that of these 87,066 whites about 15,000 are foreigners unnaturalized; *i. e.*, there are in the State 174,187 males, black and white, upwards of twenty-one years of age, against 159,001 citizens. There was, therefore, in 1870, unless some blacks were foreigners, a majority of colored over white voters of 15,180.

Mr. McMillen, who was a party to the contest before the Senate committee, elected to the Senate by the McEnery legislature, testified, at p. 273:

Q. What proportion of the colored vote was cast for the fusion or Greeley ticket, in your opinion?—A. I think a very small proportion.

Q. How many thousand votes were there in the colored vote that voted for Greeley?—A. My impression always has been that there have been about as many colored people who voted in opposition to the republican ticket, from one cause and another, as there were of white people who voted the republican ticket, and that four or five thousand would cover the entire number throughout the State.

Mr. Armstead, the colored candidate for secretary of state on the McEnery ticket, who was active in organizing colored Greeley and Brown clubs, testified, at p. 495, that in Northwest Louisiana, if the colored men voted elsewhere as they did in Caddo, there could not have been less than 3,000 colored votes for the fusion ticket.

Mr. McMillen was thereupon re-examined, and testified at p. 501:

By Mr. CARPENTER:

Q. If the same questions were put to you, would you answer them now the same as you have answered them?—A. As they are down in the record.

On page 871 *et seq.*, J. Q. A. Fellows testified as follows:

Q. In your conversation with leading democrats in New Orleans during the last canvass or two—at the time the fusion was made by Governor Warmoth—state what their calculation was that his accession to the party would be worth to them?—A. I will premise by saying that for several years I have held myself somewhat neutral in politics, waiting for an opportunity to arise when I could unite with one party or another for the best interests of the State; and last spring and summer, when the canvass was approaching and being carried on, there was an effort made by some moderate democrats and reformers, and a large number of other people in Louisiana, especially in New Orleans, that stood in the same position with myself, to make a union with the best portion of the republican party, and secure the government of the State in all proper things. A fusion was continually thought of by the democrats with the governor. I was solicited, time and again, probably by thirty, I think, to join in the movement to make the fusion. During that time, say for two or three months, the whole matter was canvassed over and again. They said that, with the assistance of the governor, or fusion with the governor, they could certainly carry the State against the republican party, or the custom-house party, or the negro party, as they called it. I thought it could not be done; that he had not votes enough at his command to do it. I understood that he had not over a thousand voters that were his followers. They admitted

that there were no more than two thousand; but they said this, that his power, with the assistance of the registration and election laws, was good for twenty thousand votes by his appointing his men, or men who would work in his interest, as registrars, and the manipulation of the registration, and the appointment of commissioners of election, and in placing the election-polls, and they thought his influence was good for twenty thousand votes. This was the repeated calculation of every one I talked with that finally went into the fusion party. Others refused to go in, who were called "last-ditch" democrats, or "straight-out" democrats; many of them refused to go in the fusion, and many of them voted for Grant and Kellogg who were within my acquaintance. They made the same calculation; there was the calculation of one, two, or three thousand followers, enough to make fifteen or twenty thousand altogether, by what was frequently called in the newspapers and the people of the State "by the manipulation of these fingers." When printed, it was put in quotation-marks—"these fingers"; this was the common talk of the politicians in Louisiana and in New Orleans, and I agreed with them.

Q. Do you now know that, previously to the fusion being created between Governor Warmoth's party and the democratic party, that the very men who were on the ticket for the State offices for the fusion party—that is, Messrs. McHenry and Ogden, were the men who had denounced Governor Warmoth in the most bitter terms?—A. Until the fusion took place in August, every leading politician, every speaker, and every newspaper denounced him, and any alliance with him, most bitterly. They denounced him in the most bitter language. Some of it was not respectful—not fit to be used. The canvass had already commenced, and Mr. Jonas was the candidate for lieutenant-governor; Mr. Ogden, the candidate for attorney-general; Mr. Ellis, a lawyer, who was expecting to secure some office—I believe had commenced. There were three at least, I remember, who had commenced to canvass the State; and commenced by going up the river, and then passing around through the northern parishes, and coming down by Shreveport, and then around by the southern parishes, making a tour of the State. They had reached about the center of the parishes on the Arkansas line, at Mindon, making speeches all the way, when they were met with a telegram at Mindon, and immediately returned, announcing that a fusion had been accomplished. I met them on the street on the day of their return, or it may have been the day after; it was the day when the ratification of this fusion was advertised to be held in La Fayette Square. I then met Messrs. Ogden and Ellis on the corner of the street, and asked them if they were going to support it. Mr. Ogden was called to one side for a moment. Mr. Ellis said "I am willing to eat my peck of dirt, or, perhaps, a bushel, but, damned if I can swallow this." He had been asked to speak, but had refused. After this he consented to go in the second canvass which had been arranged by the fusionists—to go around by the southern parishes and come up by the way of the western, and back by the northern and river parishes. I met him—as we go down town frequently to business—and asked him the result. He said he had no doubt, from what he had seen on both trips, first and last, that the union or fusion, as he termed it, had lost the democratic party from ten to twenty thousand votes, actual voters; that all through the northern parishes when he was on his first trip the leading men came out and assured them they could carry the parish by four or five or six hundred, or even a thousand majority; but on their return coming around the other way, they were obliged to go out and hunt up the leading politicians in the parishes, and they spoke in this way: "Probably we can carry this parish; this one we may lose by a hundred; in this one we probably will not be beaten—may have two or three hundred or four hundred majority at the most," and so on. So that, in his calculation, they lost fifteen thousand votes. As a further loss for the fusion, he said that the leading democrats would not support any such fusion or go into it. I saw a letter from Ex-Governor Moore, of Alexandria, that he would not even be at the meeting. He is an influential democrat, as I know, in Rapides Parish. He stated he would not be in the meeting or be introduced to Governor Warmoth, whom he had heard would be there, and whom he had denounced, as he believed, justly. His partner, Mr. Jonas, who was at that time a candidate for governor——

Mr. RAY. Lieutenant-governor?

The WITNESS. Yes, sir, and was displaced, and Mr. Penn put on the ticket. Mr. Hymans read me a letter; it was from General Moore, denouncing Governor Warmoth. Hymans said his partner, Mr. Jonas, was placed in a delicate position, where he could not say anything; but as for going into this, he would not do it himself, and, to my knowledge, he did not make a speech in the whole canvass. A number of leading democrats in New Orleans—some of the executive committee—after the fusion refused to go in the fusion movement at all, and, to my knowledge, voted for Grant and Kellogg. As soon as the fusion was made, I came out and went into the canvass myself for the republican party.

E.

The conduct of the State register covers the returns with very grave suspicion. He issued to the supervisors throughout the State the following confidential instructions, p. 147:

[Confidential.]

Mr. ———, *supervisor of registration, parish of* ———:

In addition to the instructions contained in circular No. 8 from this office, you are instructed—

I. In counting the ballots after the election, *count first the votes cast for presidential electors and members of Congress*, keeping separate tally-lists on the form (No. 1) provided for that purpose, and making up and completing the statement of voters for each poll upon Form No. 1; then close the box, reseal it, and proceed in a similar manner until all the national vote has been counted. Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals *have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish vote.*

II. As soon as the count in each case is completed, telegraph the result to this office at once. Should there be no telegraph office at the court-house, dispatch a messenger by the quickest route to the nearest telegraph station.

III. The stationery, &c., furnished for each parish is to be equally distributed among all the polling places, and at least *one* copy of the election laws must be furnished to each poll.

Respectfully,

B. P. BLANCHARD,
*State Registrar of Voters.*

He sent Mr. Packard the following letter:

STATE OF LOUISIANA,
OFFICE OF STATE REGISTRATION OF VOTERS,
*New Orleans, November 2, 1872.*

SIR: In reply to your communication of date, I must respectfully decline compliance with your request to appoint one commissioner of election at each polling place from the republican party at the general election to be held November 4, 1872.

In regard to your second request, I have the honor to inform you that the list of polling places in this parish will be published in the official journal and other papers to-morrow, 3d instant.

Very respectfully,

B. P. BLANCHARD,
*State Registrar of Voters and Supervisor of Registration, Parish of Orleans.*

Hon. S. B. PACKARD,
*President State Republican Committee.*

If these papers be read in connection with the supervisors' exhibits on file with the clerk of this House, and the affidavit of Mr. Blanchard, the fraudulent purpose which they suggest is demonstrated, so far as it can be by *ex-parte* testimony.

F.

The return by the Foreman board of the Congressional vote was separate from the returns of the vote for other officers.

The inquiry of the Senate committee was directed wholly to the other returns.

There is no proof, and there is no presumption, that the correctness of this return was verified by comparison with the parish returns.

It is uncontroverted that, in violation of the law of Louisiana, which requires them to be opened in presence of the returning-board, they were privately opened by Governor Warmoth, or by clerks in his office.

Their whereabouts since that time have not been often known. It is safe to say they have not been in the custody of the law. Some of the returns produced before the Senate committee were forgeries: p. 1095.

What credit they would be entitled to if in evidence need not be discussed, as not one of them was before the committee.

G.

The polling places in Louisiana are not fixed by law, and at the election of 1872 they were purposely established at places inconvenient of

access, in the Republican parishes, so that in some instances voters had to travel from twenty to forty miles to reach them (pp. 308–310). In some cases no notice was given of their location, and studied efforts were made to keep their location from the knowledge of colored men (p. 308). Supervisor's Exhibit B, on file with the Clerk of this House, abstracts certain proofs transmitted with his report under the following heads:

Registration.—State supervisor gave no notice where registration would be opened.
Misconduct of State registrars neglecting or refusing registration.
State supervisor gave no notice where polls would be held.
Meager number of polls in parishes.
United States supervisors threatened and debarred access to and view of polls.
Intimidation.
Blacks excluded and whites favored.
United States supervisors debarred from remaining with box after election.
Boxes run away with or secreted at close of election.
United States supervisors threatened and debarred as witnesses of the count.
Misreading of ballots.
Evidences of tampering and other frauds.

There is an immense mass of testimony of the character indicated by these headings, which, in the judgment of the committee, cannot be ignored in the disposition of this case.

H.

The affidavit of Mr. Blanchard, to which no objection was interposed by Mr. Sheridan, your committee deem it their duty to communicate to the House. It is annexed as an appendix hereto. Mr. Sheridan furnished the committee with the affidavits of two-thirds (it is said) of the supervisors and commissioners in the entire State, denying any fraud on their part or within their knowledge; also with other affidavits tending very strongly to show that Blanchard was bribed to make his affidavit. If it was made for a consideration, the credibility of the affiant is no more impeached than by his own confession of crime in the affidavit itself. From the nature of the case, such things as he alleges could not be proved by, because they could not be in the knowledge of, honest men. It is of such a character, in the judgment of your committee, as to demand a most thorough investigation of its truth or falsity before Mr. Sheridan is seated.

I.

But again:

The Foreman returns omit six parishes, to wit, Iberia, Iberville, Saint James, Saint Martin, Saint Tammany, Terre Bonne.

Mr. Sheridan challenges a count of these parishes as returned by the Lynch board. They give Mr. Pinchback an aggregate majority of..... 3,172

The affidavit of Mr. Blanchard, annexed, states that in the parish of Orleans a fraudulent vote of 6,737 was counted for the fusion ticket. The Lynch board rejected 1,623 of these fraudulent votes, which Mr. Sheridan proposed to deduct..... 1,623

The Foreman board gave Pinchback in Saint Charles Parish 382 votes, and a majority of 272. But this same board, p. 81, gives Kellogg 1,231; Antoine, for lieutenant-governor, 1,224; Deslondes, for secretary of state, 1,226; and Field, for attorney-general, 1,226. The Lynch board, p. 203, gives Pinchback 1,225, just the vote which the rest of the Republican

State ticket received there, according to the returns of the Foreman board, making his majority 1,080. Moreover, it is proved on p. 148 that the Lynch board had full returns from Saint Charles Parish. This contest should be remanded, then, for further proof, or Mr. Pinchback should be credited with the difference in his favor between the returns of the Foreman and the Lynch boards..... 808

In Red River Parish the Foreman board gives Mr. Pinchback 211 votes, pages 81, 82. But it gives every other candidate on the Republican State ticket from 913 to 918. The return of the Lynch board, page 203, gives Mr. Pinchback in this parish 911 votes. The De Feriet board, page 296, gave Blount for senator in the same parish 911. The Foreman board, page 87, gave him 311, and gives Pinchback 211. It seems clear from page 404 that the Lynch board had the full returns from this parish also. The case should be remanded, then, or Mr. Pinchback should be credited with the difference in the returns..... 650

The census reports of 1870 show the white population of the parish of De Soto to be 5,111; the colored 9,851. The registration in this parish in 1872 was, white, 1,004; colored, 1,403. The Foreman returns give Sheridan 1,441 votes; Pinchback 445. The Lynch board returns give Sheridan 798; Pinchback 992. In 1870 the Republican vote for auditor was 1,032; the Democratic 713.

These figures seem to demand that the vote of this parish should be investigated, or the difference between the returns of the two boards should be deducted from Mr. Sheridan's vote..... 1,190

Outside of the parish of Orleans there are fifty-five parishes in the State. The Foreman board omitted six and canvassed returns from forty-nine; three of these are mentioned above. Accepting the figures of the Foreman board in thirty-seven of the remaining forty-six, without question, and looking at the nine remaining parishes of Caddo, Rapides, Natchitoches, East Baton Rouge, Bossier, Grant, Saint Landry, Webster, and Saint Helena, it will be seen that these nine parishes in 1870 gave an aggregate republican majority of 2,134. By the returns of the Foreman board they gave in 1872 a Democratic or fusion majority of 4,912. See the documents mentioned below as to these parishes respectively:

| | Senate report. | Supervisors' exhibits. |
|---|---|---|
| | *Page.* | |
| Caddo | 306 | C and G. |
| Rapides | 306 | G and F. |
| Natchitoches | 307 | C and G. |
| East Baton Rouge | 308 | C and G. |
| Bossier | 309, 314 | C and G. |
| Grant | 311 | C and G. |
| Saint Landry | 312 | C and G. |
| Webster | 312 | C and G. |
| Saint Helena | 313 | |

| | |
|---|---|
| The returns from these nine parishes demand investigation, or Mr. Sheridan's majority should be deducted, at the least, if nothing be allowed Mr. Pinchback | 4,912 |
| The aggregate of deduction which should be made, therefore, if no further evidence be taken, is, at the least | 12,355 |
| Sheridan's majority, by return of the Foreman board, is | 10,614 |
| Leaving, in the only parishes which can be counted without further proof, a majority for Pinchback of | 1,741 |

Your committee are now assuming that the Foreman board was the legal returning board; that McEnery, so far as the legal returns show, is the *de jure* governor of Louisiana, and the McEnery legislature the lawful legislature of that State. They give to the documents and proof, challenging the returns from these parishes, the same consideration, and no other, which they would be compelled to give them if the McEnery government were in office and the legality of the Foreman board unquestioned. They consider the partisan source from which this proof comes and withhold from it their implicit credence. They do not say that the crimes charged by it against the McEnery party are graver or better proven than the crimes charged against the Kellogg party. They perform, in their judgment, a duty imposed upon them by the order referring this case, in reporting that these papers give ample warning to the House that the seating of Mr. Sheridan, without further evidence, may possibly cover, and in part consummate, a conspiracy against the liberties of the people of Louisiana, which was a most stupendous crime. They do not feel at liberty to report, upon the evidence before them, that this seat is vacant. The registration, election, and returns were fair and honest, as they believe, in some, if not in a majority, of the parishes of the State. That the political friends of Mr. Pinchback have not, before this, availed themselves of the opportunity which this contest between candidates on the respective State tickets offered, with process for witnesses and papers, to prove to the country that they carried this election, most seriously challenges the confidence and patience of the public. It is but just to say, however, that the expectation that Mr. Pinchback would be seated in the Senate is, perhaps, the reason that such an effort has not been made.

If this case be remanded for further proof and be fully developed, the result, there is reason to believe, will either demonstrate that the Kellogg government is rightfully in power or will furnish the proof that it is a usurpation.

Your committee recommend the adoption of the accompanying resolutions:

*Resolved*, That the evidence in this case is not sufficient to establish the right of either P. B. S. Pinckback or George A. Sheridan to a seat in this House as a Representative at large from the State of Louisiana.

*Resolved*, That Mr. Sheridan have leave to amend his notice of contest, if he shall so elect, serving upon Mr. Pinckback his amended notice within twenty days hereafter; that Mr. Pinchback have liberty to answer such amended notice within forty days hereafter, and that, upon the service of such answer, the evidence of the respective parties be taken, under the existing laws of Congress in such case made and provided; and that in case of default of an answer to such amended notice, Mr. Sheridan be at liberty to take testimony *ex parte;* and in case of default to serve an amended notice of contest, Mr. Pinchback may serve a notice of contest, as provided by law, within forty days hereafter, and take testimony in like manner.

# APPENDIX.

## A FEW SPECIMEN DEPOSITIONS AND AFFIDAVITS IN THE CASE OF GOVERNOR KELLOGG vs. EX-GOVERNOR WARMOTH, McENERY, AND OTHERS.

*Sworn statement of B. P. Blanchard, State registrar of voters under Warmoth.*

UNITED STATES OF AMERICA,
*District of Louisiana, State of Louisiana, City of New Orleans:*

Be it known that, on this 2d day of September, A. D. 1873, personally appeared before the undersigned, a United States commissioner in and for the district of Louisiana, duly commissioned and sworn, Brainard P. Blanchard, who, being duly sworn, deposes and says: That he was appointed by Henry C. Warmoth, governor of the State of Louisiana, to the office of State registrar of voters, being also by virtue of said office *ex-officio* supervisor of registration in and for the parish of Orleans; that he filled the said office during the years 1870, 1871, and 1872; that in the last-named year he was in full political sympathy with the liberal movement, and subsequently, upon the fusion of the Liberal and Democratic parties, with what was known and styled the Fusion party, and, in conjunction with others of the same political party, he devised plans for carrying the general election in the State of Louisiana, on November 4, 1872, in favor of the said Fusion party, and their candidates for Presidential electors, Congress, and State and municipal offices; that with this object in view, he proposed to take advantage of all the powers conferred upon him by the acts of the general assembly of the State of Louisiana, numbered respectively acts Nos. 99 and 100, approved March 16, 1870, and known as the registration and election laws of 1870.

That, in furtherance of this scheme, he caused a careful compilation to be made of the lists of the deceased male persons over twenty-one years of age who had died since the close of the registration in 1870, which lists were required by law to be furnished to him by the sextons of the various cemeteries in the parish of Orleans, and that said lists, so compiled, were carefully collated with the registration-books, and the registry number and the election precinct in which the deceased was registered were noted; that instead of carrying out, to the full letter, the provisions of section seven of the registration-law above referred to, he caused to be erased from the lists of registered voters only the names of such deceased electors as were well known in the community, and in cases where the deceased was an obscure personage (a large majority of the whole number being composed of such), he caused to be made out a duplicate registration certificate in his name, the same to be retained and used at the general election, as hereinafter set forth; that for this purpose he caused to be printed *fac similes* of the blank forms of duplicate registration certificates used in 1870, which were in a different style of type from those intended to be used in 1872, in order to have them filled up with the names of deceased electors, as above stated; that the number of duplicate certificates so filled up for the purpose aforesaid was as follows, more or less:

For the—

| | |
|---|---|
| First ward | 76 |
| Second ward | 8 |
| Third ward | 24 |
| Fourth ward | 4 |
| Fifth ward | 61 |
| Sixth ward | 52 |
| Seventh ward | 69 |
| Eighth ward | 35 |
| Ninth ward | 47 |
| Tenth ward | 51 |
| Eleventh ward | 44 |
| Twelfth ward | 21 |
| Thirteenth ward | 16 |
| Fourteenth ward | 7 |
| Total | 855 |

Deponent further says that, to his knowledge, a large number of certificates of registration had been issued in 1870, in the name of fictitious persons; that he caused a careful examination of the books of registration to be made, and of other records and memoranda in his possession, to ascertain the number of such fraudulent registries, and also made efforts to ascertain in whose possession such papers in the names of fictitious persons were, and that he obtained possession of some two thousand of such papers, and, in relation to such papers as he could not obtain possession of, the following course was pursued: Whenever he ascertained that they were in the hands of persons belonging to the Republican party, he then, and during registration, caused the said fictitious names to be erased from the registry list as fraudulent; but in all cases where he ascertained that such papers were in the possession of persons in the interest of the Fusion party, he instructed the assistant supervisors

of registration not to erase such fictitious names from the books in cases where he had confidence in those officers, but in cases where he had reason to suspect the fidelity of any assistant supervisor to the Fusion cause, or to believe that any of them would not assist in or abet such manipulation, he prohibited them from making any erasures whatever, reserving that workfor himself or assigning it to some confidential clerk or confidential agent whom he could implicitly trust, as will more fully appear by the documents hereto annexed, and marked A and B.

Deponent further says that he was aware of the existence of large numbers of fraudulent naturalization-papers issued in 1868 by the clerks of district courts in the parish of Orleans and other large parishes, and that in 1870, in his circular of instructions to supervisors of registration, he directed them not to register any person naturalized between July 4 and October 24, except such as were naturalized in the first and second district courts of the parish of Orleans; that the number naturalized between the dates above cited was reported by his predecessor, Hon. William Baker, chairman of the board of registration, in his report to the general assembly, dated New Orleans, January 10, 1869, as follows:

*Table showing the number of persons registered in each ward (first excepted) of the parish of Orleans who were naturalized between July 4 and October 24, 1868.*

| Ward. | Number. |
|---|---|
| First ward (no record). | |
| Second ward | 538 |
| Third ward | 903 |
| Fourth ward | 329 |
| Fifth ward | 969 |
| Sixth ward | 359 |
| Seventh ward | 423 |
| Eighth ward | 484 |
| Ninth ward | 540 |
| Tenth ward | 438 |
| Eleventh ward | 323 |
| Right bank (Algiers) | 161 |
| Total | 5,488 |

And that the result of these instructions not to recognize the validity of such naturalization was made manifest by the result of the registration of naturalized foreigners in 1870, the registration for Orleans Parish in that year being entirely new and complete.

*Table showing the number of persons naturalized between July 4 and October 24, 1868, and July 4 and October 28, 1870, registered in 1870.*

| Precinct or ward. | 1868. | 1870. | Total. |
|---|---|---|---|
| First | 96 | 70 | 166 |
| Second | 142 | 145 | 287 |
| Third | 223 | 149 | 372 |
| Fourth | 100 | 53 | 153 |
| Fifth | 134 | 141 | 275 |
| Sixth | 65 | 58 | 123 |
| Seventh | 150 | 85 | 235 |
| Eighth | 178 | 110 | 288 |
| Ninth | 197 | 93 | 290 |
| Tenth | 107 | 102 | 209 |
| Eleventh | 106 | 87 | 193 |
| Twelfth | 54 | 46 | 100 |
| Thirteenth | 26 | 18 | 44 |
| Fourteenth | 15 | 7 | 22 |
| Fifteenth | 43 | 11 | 54 |
| Total | 1,636 | 1,175 | 2,811 |

As will more fully appear upon pages 6, 7, 8, and 9 of a report to the general assembly of Louisiana by the deponent, as State registrar of voters, dated January 31, 1871, a printed copy of which is hereto appended and marked C. That the reason for such ruling by the deponent in 1870 was, that he knew that these naturalization-papers, fraudulently issued, were in the hands of persons inimical to the Republican party, with which party he was at that time politically affiliated; that the judges and clerks of courts were in 1868 entirely, and in 1870 with only two exceptions, members of the Democratic party, and that he consequently endeavored to prevent the use of said fraudulent naturalization-papers by the Democratic party; that he repeated the instructions to supervisors of registration in this regard in his pamphlet of instructions in 1872, pages 7 and 8, a printed copy of which is hereunto an-

nexed and marked D; but, upon the fusion of the liberal and Democratic parties, deponent, knowing that large numbers of said fraudulent naturalization-papers were in the hands of fusionists, and could be used in the interest of the fusion party, revoked his previous instructions, as will appear by circular No. 5, issued by deponent, hereto annexed and marked E, and that the result of such change in his ruling was that a large number of such papers fraudulently issued were used by persons registering in 1872.

*Table showing the number of persons naturalized between July* 4, 1868, *and October* 24, 1868, *and July* 4, 1872, *and October* 28, 1872, *added to the registry-lists in* 1872, *in each election precinct, parish of Orleans.*

| Precinct. | 1868. | 1872. | Total. |
|---|---|---|---|
| First | 114 | 140 | 254 |
| Second | 131 | 202 | 333 |
| Third | 242 | 395 | 637 |
| Fourth | 93 | 212 | 305 |
| Fifth | 187 | 421 | 608 |
| Sixth | 92 | 228 | 320 |
| Seventh | 75 | 183 | 258 |
| Eighth | 129 | 173 | 302 |
| Ninth | 175 | 202 | 372 |
| Tenth | 143 | 159 | 302 |
| Eleventh | 102 | 118 | 220 |
| Twelfth | 44 | 56 | 100 |
| Thirteenth | 12 | 39 | 51 |
| Fourteenth | 20 | 29 | 49 |
| Fifteenth | 63 | 64 | 127 |
| Total | 1,622 | 2,621 | 4,243 |

And deponent firmly believes that a large number of the naturalization-papers issued in 1872, to the extent of 2,000 at least, were improperly so issued.

Deponent further says that he instructed the assistant supervisors of registration for the parish of Orleans that in all cases where persons who had been registered in 1870, in other wards than those in which they resided in 1872, and who should apply for registration on account of change of residence, to require such persons to surrender the certificates of registration of 1870 to them (the assistant supervisors), to be by them returned to the office of deponent, State registrar of voters, ostensibly for the purpose of cancellation and erasure on the books, but in reality to be preserved and voted on at the ensuing general election, in the manner hereinafter set forth, and that this course was pursued and persisted in notwithstanding the formal protest of the United States supervisors of election, one of which is hereto annexed and marked F. The certificates of registration so returned deponent caused to be examined and sorted out in his office, and such as were not marked or checked in any way by the United States supervisors of elections were preserved to be voted upon in the wards from which they were originally issued, and only such were returned to the ward officers for cancellation and erasure as were deemed unfit or unsafe for use by repeating voters, as is more fully shown by the affidavit of H. L. Downes, hereto attached and marked G. The number so canceled was to the following extent only:

| | |
|---|---|
| First precinct | 80 |
| Second precinct | 43 |
| Third precinct | 101 |
| Fourth precinct | 79 |
| Fifth precinct (record lost) | |
| Sixth precinct | 115 |
| Seventh precinct | 83 |
| Eighth precinct (record lost) | |
| Ninth precinct | 14 |
| Tenth precinct | 36 |
| Eleventh precinct | 103 |
| Twelfth precinct | 11 |
| Thirteenth precinct | |
| Fourteenth precinct | 12 |
| Fifteenth precinct | 2 |
| Total | 579 |

Deponent further says that he also instructed assistant supervisors of registration, in the parish of Orleans, that whenever they found upon the registry of 1870 names of persons making their marks (X) and supposed to be negroes and not known personally to them, to procure two persons, registered voters in their respective wards, to prepare a list of such names and make an affidavit that they "had reason to believe and did believe" that the

persons named therein were not residing in the ward on the tenth day preceding the election, and the assistant supervisors were directed to erase from the lists of voters all names put down in said affidavits, and this was done, although the law made it the duty of the board of metropolitan police commissioners to cause a canvass of the city of New Orleans and prescribed that the names of such persons as should be reported by them as "not found" *only* should be stricken from the registry-list. Such affidavits were made in form similar to the one hereto annexed and marked H, and resulted in the erasure from the books of the following number of names, supposed to be all colored men, namely:

| | |
|---|---|
| First ward | 182 |
| Second ward | 36 |
| Third ward | 280 |
| Fourth ward | 309 |
| Fifth ward | 223 |
| Sixth ward | 353 |
| Seventh ward | 386 |
| Eighth ward | 164 |
| Ninth ward | 122 |
| Tenth ward | 12 |
| Eleventh ward | 40 |
| Twelfth ward | 153 |
| Thirteenth ward | 51 |
| Fourteenth ward | 17 |
| Fifteenth ward | 144 |
| Total | 2,472 |

In this connection see affidavit of James Parker, hereto annexed and marked.

That this course was pursued notwithstanding the fact that the board of police commissioners did, in obedience to the provisions of section fifty of the election law, cause a canvass of the city to be made (as will appear by the document hereto annexed and marked I), and reported the names of persons "not found," and said names were by said deponent published in the official journal of the city and State; but that no names were erased from the list in consequence of such reports, but solely upon the affidavits above mentioned. Deponent further says that from the outset of registration in 1872 he was in constant communication with the Democratic and Liberal campaign committees, and conjointly with them instructed the supervisors and assistant supervisors of registration throughout the State, verbally, in addition to written or printed instructions, from time to time, to facilitate in every manner the registration of all white men known or supposed to be in favor of the fusion candidates, and to throw every possible obstacle in the way of colored applicants for registration, such as requiring them to produce two witnesses to prove their identity and residence, delaying them by unnecessary questions and by other means, and that in compliance with such verbal instructions the assistant supervisors of registration would and did frequently select from the crowd of applicants for registration white men known to them as Democrats or fusionists, and register them, and then close their offices before the hour prescribed by law, on the pretext that they were summoned to court or some similar excuse, thus leaving the colored men, many of whom could ill afford to lose their time, unregistered. The result of such instructions, and action consequent thereon, was the addition to the registry-list of a large excess of whites over colored men, as appears from the following table:

*Table showing the number of white and colored voters added to the registration of the parish of Orleans, in each precinct, in* 1872.

| Wards. | Whites. | Colored. | Total. |
|---|---|---|---|
| First | 1,379 | 324 | 1,703 |
| Second | 1,672 | 418 | 2,090 |
| Third | 2,518 | 882 | 3,400 |
| Fourth | 1,143 | 407 | 1,550 |
| Fifth | 1,712 | 597 | 2,309 |
| Sixth | 1,359 | 474 | 1,833 |
| Seventh | 1,256 | 638 | 1,894 |
| Eighth | 903 | 212 | 1,115 |
| Ninth | 1,133 | 201 | 1,334 |
| Tenth | 1,479 | 442 | 1,921 |
| Eleventh | 1,278 | 404 | 1,682 |
| Twelfth | 593 | 192 | 785 |
| Thirteenth | 311 | 154 | 465 |
| Fourteenth | 144 | 125 | 269 |
| Fifteenth | 458 | 299 | 757 |
| Grand total | 17,338 | 5,769 | 23,107 |

Being entirely out of proportion to the relative number of the two races in the city, as shown by the late census.

Deponent further says that, in order to annoy and hinder colored men in registering, he instructed the assistant supervisors to throw every possible obstacle in the way of the United States supervisors of election and deputy marshals appointed to represent the Republican party, such as refusing them access to the books or permission to remain behind the railing, &c., and the assistant supervisors were further instructed that whenever any considerable number of negroes were waiting for registration they should raise some frivolous objection to the action of the United States officials and refuse to submit to the requirements of the enforcement acts, which conduct frequently resulted in the arrest of assistant supervisors and the closing of their offices sometimes for the entire day, large numbers of voters being thus deprived of registration. That these instructions were carried out will appear more fully by the documents annexed and marked K, L, M, N, O, P, Q, R, S, T, and U; and that, in addition to the cases mentioned therein, there were many other arrests of assistant supervisors in consequence of adherence to said instructions, of which deponent has at present has no record.

Deponent further says that commissioners of election for the parish of Orleans were all appointed by him from among persons known to be in the interest of the fusion party, and strong partisans thereof; that on the second of November he received from S. B. Packard, on behalf of the Republican State Central Committee, a communication hereto annexed and marked V, requesting the appointment of one commissioner at each poll to represent the Republican party, but that deponent refused to accede to the request, as will appear by his answer to said Packard, hereto attached and marked W; that the commissioners of election were instructed to facilitate in every possible manner the voting of persons known to be fusionists or who should offer to vote the fusion ticket, and to obstruct and hinder the voting of Republicans; that they were instructed that whenever any person offered to vote the fusion ticket they should not question him closely, but should suggest to him the requisite answers, and should decide quickly.

Deponent further says that the polling places throughout the parishes were selected with the view to the convenience of fusion voters, and were located as remotely and as difficult of access as possible from the neighborhoods chiefly inhabited by colored men; that whenever a poll was located in a colored neighborhood the commissioners were selected from persons notorious for their hostility to colored men, and said commissioners were instructed to hinder and delay all colored electors to the full extent of their power.

Deponent further says that in each ward of the city of New Orleans he employed persons whom he intended to appoint commissioners of election, and whom he did subsequently so appoint, whose instructions were to prepare written lists in advance of the names of all deceased persons (being voters) and of the wards in which they resided, whose names had not been erased from the registry lists as prepared by him, the said deponent; that these lists were ordered to be prepared upon paper similar to that provided for keeping the written lists of voters at the election, as required by section 11 of the election law of 1870, and they were instructed to strike from the poll-list in advance the names of such persons, as required by section 12 of the above-quoted law. Said commissioners were also instructed to see that a number of fusion ballots corresponding to the number of names thus erased from the lists were placed in the ballot-boxes in their respective polls, so that the written lists and the number of ballots should tally exactly at the counting of the votes; they being left to devise their own mode of carrying out these latter instructions, but, the better to accomplish the object sought, they were instructed to open their polls in advance of the hour designated by law, so that when voters presented themselves at the regular hour it should appear that some votes had already been cast; and these commissioners were also instructed to insert the list previously prepared as aforesaid, sheet by sheet, among the lists kept during the day, making the running numbers correspond; and that these instructions were obeyed to the letter in every instance, and that the names of 855 deceased persons, obtained and prepared as before related, were so erased and fraudulently marked as voted, and the same number of fusion tickets were thus voted at the said election.

Deponent further says that, by a forced and strained interpretation of section 41 of the registration law, he appointed about three thousand persons in the city of New Orleans, who were known to be violent partisans of the fusion party, among them several of bad and dangerous character, to act as "peace-officers," to take charge of the ballot-boxes in the city of New Orleans, as further appears from the documents hereto annexed, and marked X, Y, and Z, and that to some of these men were intrusted the certificates of registration of 1870, which had been surrendered by persons who had removed to other wards, and collected and sorted out as hereinbefore described, and also with such fraudulent certificates of registration of 1870 as were in the possession and control of himself, or of persons in the interest of the fusion party, for the purpose of voting thereon, and that said certificates of registration were so voted on, to the knowledge of deponent, to the extent of 3,500 votes, as is also shown by the deposition of Walter S. Long, hereto attached, and marked AA.

Deponent further says that the supervisors of registration appointed throughout the State were all in the interest of the fusion party, and were selected not only on that account, but because of their supposed willingness and ability to carry the election in favor of that

party, by whatever manipulation was possible and necessary under the registration and election laws; that in parishes where there was known to exist a large Republican majority, the supervisors were, in most cases, persons sent from New Orleans to the parishes in which they were to act, and men well known for their personal recklessness and unscrupulous character, and familiar with all the machinery used in manipulating elections and the powers conferred upon supervisors of registration by the laws; that said supervisors were instructed, verbally or otherwise, to impede in every possible manner the registration of colored voters, in such ways as closing their offices when large numbers of negroes were waiting for registration, alleging that they were out of blanks when, in truth, they were amply supplied; removing their offices to remote points; notifying only white men of their location, and giving no notice to the negroes; giving notice of the location of the office at one point, and establishing it at another without notice; establishing polling-places without due notice, and so as to facilitate the casting of a large fusion vote, and obstructing the voting of Republicans, especially of colored men; that to further carry out the before-recited determination to carry the election at any risk, deponent, without authority of law, directed that a new and complete registration should be made in the parishes of East Baton Rouge, West Baton Rouge, Saint James, and Tangipahoa, each of which parishes was known to contain a large Republican majority, and a large excess of colored over white population, on the pretext that the books of previous registration could not be found, said books having been previously purposely made way with. In this connection deponent refers to the documents hereto attached, and marked respectively: AB, AC, AD, AE, AF, AG, AH, AI, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, and AY, to show both the manner in which the new registration was ordered and inaugurated, and the spirit in which it was carried out. The result of this action will be made evident by a comparison between the registration and election statistics of 1870 and 1872, as shown by the following statement:

*Comparative table of statistics of registration and election in the parishes of East Baton Rouge, West Baton Rouge, Saint James, and Tangipahoa, in the years* 1870 *and* 1872.

| Parish. | Registered in— | | Republican vote in— | |
|---|---|---|---|---|
| | 1870. | 1872. | 1870. | 1872. |
| East Baton Rouge | 3,099 | 3,048 | 2,440 | 1,168 |
| West Baton Rouge | 1,367 | 1,256 | 702 | 445 |
| Saint James | 2,498 | 2,723 | 1,873 | 843 |
| Tangipahoa | 1,868 | 1,530 | 845 | 611 |
| Total | 9,832 | 8,557 | 5,860 | 3,067 |

Thus showing a decrease of the number registered in 1872 from that of 1870, in these four parishes, of 1,275, and a falling off of the Republican vote of 2,793, for that the fusionists registered their full vote there can be no doubt.

Deponent further says, that in several other parishes in which a large colored majority existed, the opening of the books of registration was delayed by various means for a considerable period after the time prescribed by law, September 2. Thus in Carroll Parish, containing, in 1870, a registered vote of 351 whites to 1,588 colored. the registration was not opened until October 12; Iberville, not until September 17; Saint James, September 12; Natchitoches, September 17; Franklin, September 18; Winn, September 23; Caldwell, September 26; Cameron, September 30; Vernon, September 20.

Deponent further says, that in the parish of Saint Landry, one of the largest and most populous parishes in the State, and in which the supervisor exhibited a desire to afford fair facilities for registration to all classes, he was constantly checked and hindered by directions to move his office to points remote from the districts in which the negro population had a respectable ratio, and to establish his office at places where there were but few negroes or white Republicans, as will appear by the documents hereto attached, and marked AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BK.

Deponent further states that he instructed the supervisor of registration in the several parishes to annoy and resist the United States supervisors of election in every manner possible, and that in most of the parishes his instructions were carried out and registration thereby greatly delayed, especially in the parish of West Feliciana, a very strong Republican parish, as will appear by the documents attached hereto and marked BL, BLL, BM, BN, BO, BP, BQ, BR, BS, BT, and BU, and in regard to other parishes by those papers annexed and marked BV, BW, BX, BY, BZ, and B2.

Deponent further says, that besides the selection of supervisors on account of their political bias, many of them were appointed who were candidates for office on the fusion ticket at the general election of November 4, 1872, for the purpose of stimulating them to extra exertions to cause themselves to be returned, and thus contribute to the general success of

the entire fusion ticket; that among the number J. H. Simmons, of Claiborne, was a candidate for police juror: G. H. Guptill, of Cameron, was a candidate for police juror; R. T. Carr, of De Soto, was a candidate for sheriff; G. D. Wells, of Livingston, was a candidate for recorder of his parish; P. E. Lored, supervisor's clerk for Lafourche, was a candidate for justice of the peace: E. L. Pierson, of Natchitoches, was a candidate for the House of Representatives; I. G. P. Hoey, of Rapides, was a candidate for the house of representatives; A. Chalaire, of Plaquemines, was a candidate for sheriff; A. Estopenal, of Saint Bernard, was a candidate for sheriff; G. W. Coombs, of Saint John the Baptist, was a candidate for justice of the peace: R. C. White, of Saint Mary, was a candidate for senator; Charles E. Steele, of Tensas, was a candidate for clerk of court (his brother being a candidate for district attorney); George L. Stinson, of Winn, was a candidate for recorder; Thomas Duffy, assistant supervisor fourth ward, Orleans, was a candidate for clerk of the fourth district court; Thomas Fernon, same for seventh ward, Orleans, was a candidate for representative; W. C. Kinsella, same for ninth ward, Orleans, was a candidate for representative; and C. C. Piper, clerk thirteenth ward, was a candidate for constable seventh justice court; all of whom were elected by their own count, except Thomas Fernon; that the question being raised whether supervisors were eligible as candidates, and *vice versa*, deponent received from the chairman of the Democratic campaign committee the communication hereto annexed and marked CA, to which he returned the reply hereto annexed and marked CB; and that this discussion was made to encourage supervisors to become candidates, and to return themselves elected.

Deponent further says that he issued from time to time circulars of instructions to supervisors and assistant supervisors of registration for their observance and guidance, copies of which are hereto annexed and marked CC, CD, CE, CF, CG, CH, CI, CK, and, in addition thereto with a view of preventing the United States supervisors of election and other officials appointed and acting under the enforcement acts of Congress from taking any cognizance whatever of the results of the election for State and parish officers, he issued to all supervisors of registration a confidential letter of instructions, hereto annexed and marked CL, which, for greater security and secrecy, he caused to be sent to them by the hands of trustworthy agents, who were previously instructed by him as to the details necessary to be worked up to accomplish the object aimed at, namely, the success of the fusion ticket at the general election; and that he prepared and supplied to the supervisors and assistant supervisors of registration throughout the State two sets of blank forms of tally-sheets, statements of votes, &c., one set of which was to be used for returns for Presidential electors and members of Congress, and the other for State, parish, and municipal officers only, with the intent of so manipulating the vote for the latter candidates that those running on the fusion ticket should be returned and declared elected in parishes where the vote showed a majority cast for the Republican candidates for Congress and Presidential electors.

Deponent further says that in order more effectually to defeat and counteract the effect of the supervision and inspection of the registration and election by the United States officials, he sent to all supervisors a telegraphic dispatch, a copy of which is hereto attached and marked CM, which instructions deponent believes were faithfully carried out in a majority of the parishes, with the effect of excluding a large Republican vote at the election.

Deponent further states, that in the parish of Terre Bonne, containing a large excess of Republican voters, the supervisors of registration originally appointed Mr. C. A. Buford, a resident of the parish; having been taken sick, he was superseded by F. J. Stokes, a resident of New Orleans, who was familiar with all the advantages possible to be taken by supervisors of registration under the State laws; that said Stokes, upon assuming charge of the office, gave out that he had no blanks, though an ample supply had been furnished to him, as is shown by documents hereto attached, and marked CN and CO; and that Stokes, without warrant of law, did issue a notice to all registered voters of that parish to come forward and submit their certificates of previous registration to his inspection, to be countersigned or vised, else they would not be allowed to vote on them, as is shown by a printed copy of his notice hereto attached and marked CP; and that the said Stokes did in this and many other ways hinder and impede the registration of Republican voters; and that said Stokes, knowing that a large Republican majority had been cast at the election of November 4, 1872, did fail and refuse to make a count of the ballots in three or more boxes, but fled to the city of Orleans, leaving said boxes uncounted, alleging intimidation, but really with the avowed purpose and design of having the return of said parish thrown out by the returning board, and the Republican vote cast consequently excluded from the count, which was done; and, furthermore, that the general bearing and demeanor of said Stokes toward Republicans was overbearing and arbitrary in the extreme, so much so that it was made a subject of complaint by parties in the fusion interest, to the effect that Stokes's manner and action were injuring the party.

Deponent further says, that in the parish of Madison, which always contained a large excess of Republican voters, no returns of the election were made according to law, but that the supervisor of registration, W. J. Cahoone, a resident of New Orleans, sent to the parish because of his known skill in the manipulation of elections, knowing that there had been a large Republican majority cast at the election, fled the parish at night and came by rail to New Orleans, bringing with him only fragmental memoranda, such as tally-sheets, check-

lists, &c., from which he proceeded to fabricate his returns of the election of that parish; that for that purpose deponent furnished the said Cahoone with the necessary blanks and directed his clerk to instruct and assist the said Cahoone in making out said fictitious returns; that said Cahoone prepared said fraudulent returns in a room on Gravier, near Baronne street, in the city of New Orleans, and made oath to them before J. P. Montamat, at that time third justice of the peace for the parish of New Orleans, having previously signed the names of the commissioners of election thereto, as having been sworn to before him in the town of Delta, parish of Madison, as supervisor of the parish; that said returns, as delivered to the returning board, did not exhibit the true vote cast in Madison Parish at the election aforesaid, but showed a decrease from the actual Republican vote cast of about 550 votes; and that said Cahoone merely returned on said fabricated returns the vote for national and State officers, and omitted therefrom the vote cast for parish officers in order that such officers might be appointed by the governor, and thus prevent the Republican candidates, who were in reality elected, from obtaining their offices.

Deponent further says, that in the parish of Iberville, also a parish largely Republican, the supervisor of registration, J. L. Tharp, a resident of New Orleans, and familiar with the manipulation of elections, finding that a large Republican majority had been cast at the election, induced the commissioners of election to refuse to sign the returns, alleging intimidation, for the purpose of having the returns of election from that parish thrown out by the returning board, and the vote of said parish for all local officers, which was 2,239 Republican to 722 fusion, was excluded and thrown out by the said board, as expected and intended by said Tharp.

Deponent further says that in the parish of Saint Martin, the supervisor, O. Delahoussaye, jr., knowing that a majority of Republican votes had been cast at the election, abandoned his office, leaving one box uncounted, alleging intimidation and armed interference of the negroes, in order to have the vote of that parish excluded by the returning board, as appears by the telegram hereto attached and marked CQ.

Deponent further says that in the parish of Saint James the supervisor originally appointed, D. F. Melville, being suspected by the fusion campaign committee of favoring some of the Republican candidates, was summarily removed, and J. C. Golding, a resident of New Orleans, was appointed in his place, and that said Golding, knowing that the Republican candidates had received a large majority of the votes cast at the election, failed to finish counting the vote, abandoning three or more of his boxes, and returned to New Orleans with the avowed intent of having the entire vote of the parish thrown out on account of intimidation, and the returning-board did so exclude the entire vote of that parish for local officers.

Deponent further states that the consequence of the action of said supervisors of registration in the parishes of Madison, Iberville, Terre Bonne, Saint Martin, and Saint James is shown by a comparison of the number of votes registered and of votes cast in 1870 and 1872, as follows:

*Comparative table of statistics of registration and election in 1870 and 1872 in the parishes of Madison, Iberville, Saint Martin, Terre Bonne, and Saint James.*

| Parish. | Registered in 1870. | Republican vote in 1870. | Registered in 1872. | Republican vote in 1872, as returned by the Lynch board. | Republican vote in 1872, as returned by the Mitchell board. |
|---|---|---|---|---|---|
| Iberville | 3,354 | 1,496 | 4,036 | 2,239 | 2,239 |
| Madison | 2,120 | 1,269 | 2,725 | 1,756 | 1,227 |
| Saint James | 2,498 | 1,873 | 2,723 | 1,852 | 843 |
| Saint Martin | 1,481 | 525 | 1,961 | 718 | ..... |
| Terre Bonne | 3,891 | 1,422 | (*) | 1,593 | ..... |
| Total | 13,344 | 6,585 | 11,445 | 8,158 | 4,309 |

* Not reported.

Thus showing that with an increase of the number of registered voters in these parishes (Terre Bonne excepted, from which no reports were made to deponent by Stokes) of 1,992 voters, the Republican vote, as returned by the Lynch board, was 3,849 greater than the same vote as counted in joint session of the fusion legislature, and that the entire Republican vote of two parishes, Saint Martin and Terre Bonne, was not only totally excluded from the ree turns of the fusion returning board, but was also excluded in the count of the votes for governor and lieutenant-governor in joint session of the fusion legislature at Odd-Fellow's-Hall, all of which was the natural consequence of the action of the supervisors of registration in said parishes, as hereinbefore set forth.

Deponent further states that in the parishes of Rapides and Natchitoches, in which the registration of 1872 was new and complete, in consequence of the formation of the parishes of Vernon and Red River from their territory, and in both of which the supervisors were fusion candidates for the house of representatives, the registration reported by them was as follows:

| | White. | Colored. | Total. |
|---|---|---|---|
| Rapides | 1,719 | 1,629 | 3,348 |
| Natchitoches | 1,517 | 1,833 | 3,350 |

as appears from the reports of said supervisors hereto annexed and marked CR, CS, and that the returns of election as made by said supervisors, viz, J. G. P. Hooe and E. L. Pierson, were as follows:

| | Kellogg. | McEnery. |
|---|---|---|
| Rapides | 1,169 | 1,960 |
| Natchitoches | 550 | 1,250 |

Showing manifest frauds in those parishes of about 700 votes in Rapides and of about 1,200 in Natchitoches (in favor of the fusion ticket), as it has been well established by the testimony taken before the committee of the United States Senate, and by other ample evidence, that very few colored men voted the fusion ticket. The manner in which these frauds were accomplished is clearly set forth in the report of said Senate committee, pages 306, 307, and 308.

Deponent further states that in the parish of Webster the supervisor of registration, E. C. Bright, in carrying out the instructions received from the deponent, refused to submit to the inspection of the United States supervisors of election, as is shown by the testimony taken before said Senate committee, and to be found on page 12 of their report, and the documents attached hereto and marked CT, CU, the result of which action was that said supervisor of registration made the returns of the election in that parish to the returning board as 977 for McEnery against 622 for Kellogg, while the report of the United States supervisors shows a vote of 377 for McEnery against 824 for Kellogg, a difference against the Republican votes cast of 202 votes.

Deponent further says that in the parish of Morehouse, at poll No. 4, at which a Republican majority was cast, the box was tampered with before it was counted, so that when it was opened more ballots were found in the box than there were names on the written list required by section eleven of the election law, the intention of the supervisor of registration being to have that box thrown out and have a small fusion majority in the parish for the State ticket of some eighty-three votes; otherwise there would have been a Republican majority in the parish of about the same number.

Deponent further says that in the parish of Jefferson the box from the poll held at Camp Parapet (or Colcord's) was, either while *en route* to the office of the supervisor of registration, at the court-house of said parish, or after having been deposited there, opened or otherwise tampered with, and fraudulent fusion ballots deposited therein to the number of about 400, to replace an equal number of Republican ballots taken out, which were known to have been voted, which is further shown by the documents hereto annexed and marked CV and CW.

Deponent further says that in the parish of Claiborne the supervisor of registration, J. E. Scott, being suspected of complicity with the Republican candidates in that parish and Congressional district, was removed from office, and one J. H. Simmons appointed to replace him; that said Scott did not turn over to said Simmons the records of his office, but that said Simmons did, nevertheless, hold the election in the parish of Claiborne without books or other formal evidence of his official position, and did conduct the said election without poll-books, poll-lists, or other necessary blanks required by law to be used, as is shown by the documents hereto annexed and marked CVV and CWW.

Deponent further says that, in addition to instructing verbally the commissioners of election for the parish of Orleans, he issued for their guidance the circular of instructions hereto annexed and marked CX.

Deponent further says that in the parish of Orleans, besides the fraudulent and duplicated certificates of registration given to persons to be voted on, in the manner already described, duplicate ballot-boxes were provided for the different wards, as follows: Two to the third ward; two to the eleventh ward; one to the thirteenth ward; one to the fourteenth ward; two to the fourth ward; two to the fifth ward: two to the eighth ward; one to the fifteenth ward; labeled and marked ready for use in the same manner as those actually used on the day of the election (see deposition of W. L. Catlin, hereto attached and marked CZ); with the intention of having said boxes filled with a large number of fusion ballots and a comparatively small number of Republican ballots, and of substituting them for the boxes actually used in cases where there was reason to suspect that said boxes contained a Republican majority; and deponent has reason to believe, and does believe, that many, if not all, of said duplicate boxes were used, from circumstances which occurred during the night after the election, and during the counting of votes at Mechanics' Institute; and the manifest discrepancy between the fusion vote and the Republican vote in the boxes when opened, for instance in the third ward, poll number four, the vote as counted was 384 for McEnery against 96 for Kellogg, and there were eighty more ballots in the box than names on the written list

required by section eleven of the registration law; at poll number five, same ward, the vote as counted was 438 for McEnery against 72 for Kellogg, a totally disproportionate number for the locality where the poll was held. Both of these boxes were counted for the fusion returning board, although formal protests were filed in each case by the United States supervisors of election.

At poll number eight, same ward, which was located in a neighborhood densely populated by negroes, the commissioners placed fifty Republican ballots in the box after the closing of the polls, so that when counted there were found 365 ballots in the box and but 316 names on the written list, and the vote was for McEnery 24, for Kellogg 338; that in consequence of these discrepancies and the large majority against their ticket, the fusion returning board excluded the count of this box in making their compilation of the returns.

In the eleventh ward, poll number one, when counted, showed 311 votes for McEnery against 40 for Kellogg, although this box was located near the levee, where a large number of colored laborers reside, and at poll number five, same ward, the vote was for McEnery 306, for Kellogg 106. The count of both these boxes was also protested against by the United States supervisors, and the figures are totally irreconcilable with the political complexion of any portion of that ward.

At poll number six, of the same ward, where a majority of Republican votes had been cast, additional Republican ballots were put in the box to cause a discrepancy between the number of ballots in the box and the number of names on the written list, and thus have the vote of that poll thrown out by the returning board, and that the vote of said box was 115 for McEnery against 200 for Kellogg, and the poll was excluded by the Fusion returning board.

In the thirteenth and fourteenth wards circumstances do not point so clearly to the substitution of boxes as in the cases of the two wards above cited, but the inference is strong that they were used, as the returns show a large reduction from the Republican vote of 1870, and a corresponding or greater increase in the Democratic or Fusion vote.

In the fourth ward, which was largely Republican in 1870, at poll number one located in the immediate vicinity of the sugar-sheds and lower steamboat landing, always thronged with colored laborers, the box contained 315 votes for McEnery against 92 for Kellogg; at poll number eight, same ward, the vote was for McEnery 189, for Kellogg 94. No notice was given for the location of the last poll until the morning of the election, and it was not found by the United States supervisors, representing the Republican party, until noon.

In the fifth ward, also heretofore Republican by large majorities, poll number one, as counted, was 350 for McEnery against 118 for Kellogg; and poll number nine, same ward, 237 for McEnery against 70 for Kellogg. These polls were situated at the two extremes of the ward, the former near the levee and French market, always thronged by colored men, and the latter in the rear of the ward, where but few persons live, and those principally colored market-gardeners.

In the eighth ward the box from poll number one, also located near the levee, and in the neighborhood of the old Pontchartrain Railroad depot and the Port market, contained, for McEnery 298, for Kellogg 24. The box from poll number four, same ward, contained, for McEnery 353 votes against 89 for Kellogg, and on the close of the polls, when the commissioners of election were bringing the box to Mechanics' Institute, the United States supervisor for the Republican party was thrown out of the cab, and there is no doubt that the duplicate box was then substituted for the original one.

Deponent further says that after the receipt of all the ballot-boxes of the parish of Orleans at the Mechanics' Institute, on the night of November 4, 1872, he was about to proceed to make the count of the votes in the same manner as that in which he had already instructed the supervisors of registration in the country parishes to proceed, viz: "To count the electoral and Congressional first, and then to deny to the United States officials the right of supervision and inspection of the count of the ballots for State, parochial, and municipal officers," and had already caused several boxes to be opened and the counting of ballots commenced, when General James Longstreet presented to him the communication hereto attached and marked CY; that on receipt of said demand he at first declined to accede to it, and caused the boxes already opened to be closed and resealed and the counting suspended, but after consultation with prominent members of the Fusion party and several interviews with General Longstreet and others representing the Republican party, he finally consented to the conditions demanded, but that he did so for two reasons, only, viz: First, that he feared armed interference on the part of the United States authorities in the event of refusal or non-compliance with the demands or requests made upon him; and second, that from his knowledge of the manner in which the registration had been conducted and his instructions as before narrated had been carried out, as well as from his knowledge of the number of fraudulent votes cast for the Fusion candidates at the election, and the number of prepared boxes substituted for genuine ones, he had so much confidence that the Fusion ticket had carried the city by a majority sufficiently large to more than overcome any unforeseen failures in the country parishes, therefore he preferred to submit to the inspection demanded rather than risk a conflict between the State and Federal authorities and jeopardize the success of his party.

Deponent further says that, during the counting of the votes, which was resumed on

the morning of November 5, every possible obstruction was thrown in the way of the United States supervisors of election and others representing the Republican party; that they were discourteously treated in many instances, every advantage taken of them when absent even momentarily, and whenever they protested against any proceeding they were told that all protests must be made in writing before any attention would be paid to them, and when such written protests were filed they were taken possession of by deponent or his clerks and assistants and destroyed, or otherwise made way with, in order to prevent the returning board from having any knowledge whatever of the filing of such protests, and any action on the part of said board detrimental to the Fusion interests in consequence thereof; that said United States supervisors and other officials were allowed admission into the hall of said institute only upon passes signed by deponent or his chief clerk, and even then were required to exhibit their commissions to the policemen on guard at the door for identification; that admission was freely given to candidates for office upon the Fusion ticket, and almost invariably denied to Republican candidates, and every other possible studied annoyance offered to Republicans and their friends and representatives.

Deponent further says that in counting the votes of the parish of Orleans, assistant supervisors and commissioners of election were instructed, when counting "scratched" tickets, that whenever the name of a Fusion candidate was erased and the name of a Republican candidate substituted therefor, that unless the name substituted corresponded letter for letter with the name of the Republican candidate for the office voted for, as printed on the straight or regular Republican ticket, such ballot was not to be credited to the said candidate, but tallied as "scattering"; but whenever they found the name of a Republican candidate erased or scratched and the name of a Fusion candidate substituted, the manner of proceeding was reversed, and the ballot credited to the Fusion candidate without regard to the initials or orthography of the name of such candidate, as printed on the regular Fusion ticket, and that these instructions were in the majority of instances thoroughly and systematically carried out.

Deponent further says that from the facts and statistics before related in this deposition, it is shown that the total number of votes gained to the Fusion ticket in the parish of Orleans by means of fraudulent manipulation of registration-papers, voting on the names of dead men, and by the substitution of duplicate and fraudulent ballot-boxes, amounted to 6,737 votes, divided as follows, viz:

| | |
|---|---|
| Number of duplicates issued in the names of deceased voters and voted on for the Fusion ticket at the election | 855 |
| Number of certificates of registration fraudulently issued in 1870, and of certificates of registration surrendered by persons removed from the wards in which they were registered in 1870 and voted upon for the Fusion ticket in 1872 | 3,502 |
| Number of Fusion ballots contained in boxes substituted for the ones actually used at the election, about | 3,181 |
| Against Republican ballots placed in same boxes to avert suspicion | 801 |
| Or a fraudulent majority of Fusion votes in said boxes of | 2,380 |
| Total given to the Fusion party by frauds | 6,737 |

And that the loss in votes to the Republican party by fraudulent means was 3,010, divided as follows:

| | |
|---|---|
| Number of names of colored voters erased from the registry by fraudulent affidavits, without sanction of law | 2,472 |
| Number of Republican ballots contained in two boxes thrown out by the Fusion board on account of stuffing by the commissioners | 538 |
| Total loss to the Republican party by frauds | 3,010 |

And that in the country parishes, so far as set forth by deponent in the foregoing portions of this instrument, the Republican vote was reduced by the fraudulent means hereinbefore narrated to the extent of about 9,314 votes, divided as follows:

| | |
|---|---|
| Republican votes excluded by fraud in the parishes of East Baton Rouge, West Baton Rouge, Saint James, and Tangipahoa, consequent upon the new registration ordered and made in those parishes | 2,793 |
| Republican votes cast but not counted in the parishes of Iberville, Madison, Saint James, Saint Martin, and Terre Bonne, in consequence of the refusal of the supervisors of registration to count the vote, or the abandoning of the boxes by said supervisors, about | 3,849 |
| Republican votes cast but not returned as counted in the parishes of Natchitoches and Rapides, about | 1,900 |
| Loss to Republican vote by fraud and violence in Webster Parish, about | 202 |
| Loss to Republicans by exclusion of poll 4, in Morehouse Parish, about | 170 |
| Loss to Republicans by exclusion of Camp Parapet poll, parish of Jefferson, left bank, about | 400 |
| Total reduction from the actual Republican vote, as shown or estimated above | 9,314 |

Deponent further says that on the night of the sixth of December, 1872, his office of State registrar of voters was forcibly taken possession of by P. B. S. Pinchback, then holding possession of the building used as a State-house, and acting as governor of Louisiana; that in anticipation of such seizure deponent and his clerk and employés had removed from said office such important papers, records, and documents as they had time to remove to a place of security, but in consequence of the sudden manner in which such seizure was made, he was forced to leave in the said office numerous papers, records, documents, and memoranda, intelligible only to himself or his clerk, bearing upon the subject of frauds committed at the general election of November 4, 1872, in parishes other than those embraced in this deposition, and also containing details of frauds committed in parishes hereinbefore mentioned, for which the figures are expressed approximately, and he has ascertained that said documents, papers, &c., were accidentally destroyed in the confusion of affairs existing at that time. And deponent believes and avers that were those memoranda, papers, &c., now attainable, he could exhibit and show further frauds committed in several parishes not herein asseverated. Deponent further says that he believes, and has reason to believe, and knows that had not the fraudulent practices as above recited been resorted to and made use of by persons in the interest of the Fusion party, and for the benefit and advantage of said Fusion party as hereinbefore set forth, and had the election returns been properly and fairly made by the supervisors throughout the State, and had the large Republican parishes which were thrown out, unjustly, unfairly, and for the purpose of reducing the Republican vote, been counted, as they should have been, the candidates for Presidential electors, members of Congress, and State officers upon the Republican national and State tickets would have shown to have been elected by a large majority of the votes cast in the State at the election held on the fourth of November, 1872. And deponent further says that he believes, has reason to believe, and knows that the Republican national and State tickets received a considerable majority of the votes actually cast at the election held on the fourth day of November, A. D. 1872, in the State of Louisiana.

B. P. BLANCHARD.

Sworn to and subscribed before me on this second of September, 1873; and I hereby certify that the affiant, B. P. Blanchard, was State registrar of voters, &c., during the years 1870, 1871, and 1872.

Witness my hand and seal at the city of New Orleans on the day first above named.

F. A. WOOLFLEY,
*United States Commissioner.*

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[NOTE.—The exhibits referred to are very voluminous and are omitted. They are mostly originals, and are on file with the depositions.]

*Sworn statement of Walter Sully Long, chief clerk of the State registrar of voters.*

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared before me Walter Sully Long, who, being duly sworn, upon his oath states as follows:

From March, 1872, to January, 1873, I was chief clerk to B. P. Blanchard, then holding the office of State registrar of voters for the State of Louisiana. In that capacity I was in the fullest confidence of my chief, and was aware of all and every transaction of a political nature in the office during the campaign of 1872.

The necessity of carrying the election for the fusion party was frequently a matter of discussion between Blanchard, myself, and others, and a plan of operations was finally adopted at my suggestion, and carried out, as follows:

I. The sexton's monthly returns of burials of persons over the age of twenty-one years were carefully compiled by wards, the registration number ascertained and noted, and a list made of them.

II. A thorough examination was made of the registry-books of 1870, in order to ascertain the number of names of fictitious persons registered in that year. In every ward where the persons having control of these false registry papers were acting with the fusion party, these names were used, but in wards where the supervisors of 1870 were not acting in harmony with the fusion party, particular care was taken to prevent their using the fraudulent papers, and to detect any attempt at so doing.

III. A system was established requiring all persons who had been registered as voters in 1870, and who had subsequently removed, to deliver up their papers of that year before receiving certificates of registration in 1872. These were sent to the office of the State registrar of voters every week, and were carefully sorted out by myself and others, and all that showed no evidence of having been examined by the United States supervisors of election were set aside to be used by repeaters on election day.

IV. During the ten days preceding the election a list was made out by me of the registry numbers and names of the dead, removed, and fictitious persons before described, and given to each assistant supervisor of registration for the city wards.

Two or more persons in each ward, who were to serve as commissioners of election, were set to work making lists of those names upon sheets of paper similar to that designed to be used on the day of election in keeping the written list of voters required by law at each polling-place.

V. The poll-lists were printed, containing the entire registration of both 1870 and 1872. No erasures were made until the Saturday and Sunday preceding the election, when the names that could not be made available for the fusion cause were crossed off in black pencil on the lists for certain polls in each ward, and in number to correspond with the written lists of names before alluded to.

These preliminaries having been completed, it was a mere question of manual dexterity on the part of the commissioners of election to get within the box a number of ballots to correspond with the names crossed off in black from the printed lists and written in advance upon the tally-lists.

The estimate of the number of votes required to carry the election was as follows.

For the first ward, 500; second ward, 500; third ward, 1,000; tenth ward, 500; eleventh ward, 500; twelfth ward, 250; thirteenth ward, 100; fourteenth ward, 50; making a total of 3,400 for the up-town wards; and for the fourth ward, 300; fifth ward, 500; sixth ward, 500; seventh ward, 500; eighth ward, 600; ninth ward, 600; fifteenth ward, none; a total of 3,000, and an aggregate of 6,400; to this must be added the number of papers to be voted on by "repeaters," which was estimated at 2,000.

VI. The number of fraudulent votes actually counted, and which can be proved by own testimony and that of other persons concerned, is—

| | | |
|---|---|---|
| In the first ward | | 281 |
| In the second ward | | 243 |
| In the third ward | | 803 |
| In the tenth ward | | 306 |
| In the eleventh ward | | 330 |
| In the twelfth ward | | 101 |
| In the thirteenth wa r | | 98 |
| In the fourteenth ward | | 26 |
| Total up town | | 2,188 |
| In the fourth ward | 186 | |
| In the fifth ward | 155 | |
| In the sixth ward | 336 | |
| In the seventh ward | | |
| In the eighth ward | 393 | |
| In the ninth ward | 244 | |
| In the fifteenth ward | | |
| | | 1,314 |
| Grand total | | 3,502 |

Beyond this the papers given to repeaters were about 2,000. I cannot at present remember the exact number, but I think that 1,400 were given out to be used in the first, fourth, and sixth municipal districts, and 600 to be used in the second and third districts.

I further know and can produce, I believe, the men who acted as commissioners of election at the polls in each ward where fraudulent votes were cast or counted at the general election of November 4, 1872.

WALTER S. LONG.

Sworn and subscribed before me this 4th day of September, 1873, at New Orleans, La.

F. A. WOLFLEY,
*United States Commissioner.*

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*Sworn statement of Robert H. Chadbourn, supervisor of registration of Saint Charles Parish.*

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this 4th day of September, A. D. 1873, personally appeared before the undersigned, a United States commissioner in and for the district of Louisiana, duly commissioned and sworn, Robert H. Chadbourn, of the State of Louisiana, who, being first duly sworn deposes and says: That on or about the 7th day of September, 1872, he was appointed by Governor H. C. Warmoth assistant supervisor of registration in the parish of Saint Charles, in the said State of Louisiana; that on or about the 23d of October, a communication was issued by Governor Warmoth to one Boutte as assistant supervisor of registration for Saint Charles in affiant's place; that affiant came to the city of New Orleans to see Governor Warmoth regarding this matter; that Governor Warmoth told him that the fusionists complained that he was a Grant man, and was not sufficiently in the fusion interests, and asked

affiant what the vote was in Saint Charles Parish; that affiant told him about 1,500 Republican and 300 Democratic; that Governor Warmoth then asked him how much he could cut down Kellogg's majority in Saint Charles Parish; that affiant replied he could cut it down several hundred; that Governor Warmoth asked affiant if he could not cut Kellogg down to 300 majority, and affiant replied that he might do so; that Governor Warmoth told affiant he could do what he liked with the parish ticket, but Kellogg must be beaten; that Governor Warmoth promised affiant he would keep him in his position if he would do what the fusionists wanted him to do in making up the returns of the election in Saint Charles Parish; that Governor Warmoth in this same conversation told affiant he wished Gibson to be counted in as member of Congress from this district, and Sheldon to be counted out; that on the morning before the election, viz, Sunday, November 3, 1872, affiant was informed that he had been removed as assistant supervisor of registration of the parish of Saint Charles, and he immediately came to the city of New Orleans and had an interview with Governor Warmoth in a room at the Saint Charles Hotel; that Mr. Gibson was present during part of the interview; that Governor Warmoth said that the fusionists were raising hell with him for keeping affiant as supervisor; that in order to retain his position affiant must make strong pledge to work in the fusion interest in Saint Charles Parish, by carrying the election for them; that affiant said he would do what he could, but that there was a chief constable in the parish who did not work in harmony with him; that Governor Warmoth then gave affiant a blank commission for chief constable, saying affiant could appoint any one he pleased, by just inserting his name; that if affiant would work right and cut down the Republican majority, that affiant should be appointed tax-collector of Saint Charles Parish; that Governor Warmoth further said he could control any appointment in McEnery's gift, if he (McEnery) were elected governor; that affiant asked if Governor Warmoth was sure that McEnery would appoint him tax-collector, whereupon Governor Warmoth took affiant to Mr. McEnery in the same hotel, and introduced affiant as the gentleman to whom he (Governor Warmoth) had promised the tax-collectorship in Saint Charles Parish, in consideration of his services to the fusion party as supervisor of election; that McEnery said it was all right. Affiant further says that he is and has always been a Republican, and that he returned Saint Charles Parish as Republican by 1,090 majority, which was what the Republican party was entitled to in said parish.

ROBERT H. CHADBOURN.

UNITED STATES OF AMERICA, *District of Louisiana:*

On this 4th day of September, A. D. 1873, personally appeared before me Robert H. Chadbourn, who, being first duly sworn, declares that the statements made by him in the foregoing written statement subscribed by him are all true and correct.

WILLIAM GRANT,
*United States Commissioner.*

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*Sworn statement of Henry L. Downs, clerk in the office of State register.*

UNITED STATES OF AMERICA, *District of Louisiana:*

Personally appeared, this the 21st day of June, 1873, before me, the undersigned authority, Henry L. Downs, who, being duly sworn, deposes and says: That during the registration preceding the election of November 4, 1872, he was a clerk in the office of State registrar of voters for the State of Louisiana; that during the two months of registration, certificates and duplicates of registration accumulated in said office; they were collected by the assistant supervisors of registration of the different wards of the city of New Orleans from voters changing their residence from one ward to another, to whom a new certificate would be furnished and the old one forwarded to the office of the State registrar of voters, who was *ex-officio* supervisor of registration for the parish of Orleans, or city of New Orleans. These certificates and duplicates accumulated to the number of several thousand, and completely filled a large-sized ballot-box.

Deponent further states that he assisted in assorting them according to wards and availability for use by repeating voters. Some were canceled as being considered unsafe to use, or as having been marked in some manner by the United States supervisors; others (and the larger portion), upward of two thousand, were retained intact to be used on the 4th of November, 1872; and deponent further states that it is his belief that they were so used.

HENRY L. DOWNS.

Sworn to and subscribed before me on this 4th day of September, 1873, at New Orleans, La.

F. A. WOLFLEY,
*United States Commissioner.*

*Sworn statement of Oscar F. Hunsaker, chairman of the Fusion-Warmoth returning-board, and Samuel M. Todd, a member of the same board.* [*See canvass of Fusion returns published in Senate report, pages* 81, 82, *and* 83, *purporting to have been signed by Hunsaker and Todd.*]

STATE OF LOUISIANA, *City of New Orleans:*

This day personally appeared before me, William Grant, United States commissioner, Samuel M. Todd and Oscar F. Hunsaker, residents of the State of Louisiana, who, being first duly sworn, depose and say: That they were members of the State senate of the State of Louisiana, sitting in the Mechanics' Institute on the 9th day of December, 1872; that afterward, to wit, on or about the 10th day of December, 1872, said deponents left the senate sitting at the Mechanics' Institute, and united with the assemblage known as the McEnery senate, sitting at Lyceum Hall, in the city-hall building of the city of New Orleans; that the senate of the said McEnery assemblage proceeded to organize, and that on or about the date last named said senate proceeded to elect a returning-board or board of canvassers, who were to correct, canvass, and compile the returns of election for State officers, Presidential electors, &c., under the act approved by H. C. Warmoth, November 20, 1872; and said deponents, to wit, S. M. Todd and O. F. Hunsaker, together with S. M. Thomas, B. R. Forman and Archibald Mitchell, were elected as said board; that the said board proceeded to organize by the election of O. F. Hunsaker, one of said deponents, president thereof; that the said returns were then produced from trunks and carpet-bags in a small room, on an upper floor of the Saint Charles Hotel; that said returns were brought to said room by one O. D. Bragdon, who appeared to be in possession of the same; that said returns had been opened, compiled, and canvassed before they came into the possession of said deponents and the other members of the board; that although said deponents did carefully examine said returns, and made themselves cognizant of the nature of the same, and the mode and manner in which said returns were compiled, and the result sought to be shown, yet said deponents neither jointly nor separately, nor in any way whatever, signed or authorized any person to sign for them the purported canvass of returns known in the Congressional report on Louisiana affairs as the "Forman returns," dated December 11, 1872, by which returns it was made to appear that John McEnery was elected governor, and that the Fusion State ticket was elected; neither did they or either of them at any time consent or agree that said purported canvass was or is correct, or authorize the publication of the same in any manner whatsoever; that soon after the meeting of said board of canvassers, aboved referred to, one of said board, to wit, S. M. Thomas, left the city, and if he ever resigned as a member of said returning-board it was not known to either of said deponents, nor did said O. F. Hunsaker, as president of said board, ever at any time receive any indication or any communication of the resignation or withdrawal of said S. M. Thomas from the said board of canvassers; and that neither of said deponents ever met or participated in any canvass of returns after said S. M. Thomas left the city, nor did they ever complete the canvass of said returns, nor did they ever authorize any person or persons to do so for them; said deponents further state that by the pretended canvass of said returns as published without the consent of said deponents, the returns from the following parishes are shown to have been entirely thrown out, to wit, Saint Martin, Iberia, Terre Bonne, Iberville, and Saint James; that the said parishes were and are well known to be largely Republican, the two parishes of Saint James and Iberville alone giving more than 2,500 Republican majority; that there was no sufficient proof or good reason why said parishes should have been omitted; that had the vote of said parishes been included in the publication of said purported returns, as of right it should have been, it would have added several thousand votes to the Republican ticket; and deponents further say that a fair, proper, and correct canvass of said returns would have shown that William P. Kellogg was elected governor of Louisiana at the election held on the 4th of November, 1872, and said deponents verily believe that said William P. Kellogg was elected governor of the State of Louisiana by the actual votes cast at said election.

OSCAR F. HUNSAKER.
SAMUEL M. TODD.

UNITED STATES OF AMERICA, *District of Louisiana:*

On this 6th day of September, 1873, personally appeared before me Oscar F. Hunsaker and Samuel M. Todd, known to me as the persons they represent themselves to be, members of the senate of the State of Louisiana, and late members of the so-called Fusion board of State canvassers, known and designated in the United States Senate report on Louisiana affairs as the "Forman board," who, being duly sworn, declared on oath that the facts stated by them in the foregoing affidavit are true and correct.

WILLIAM GRANT,
*United States Commissioner.*

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*Sworn statement of W. L. Catlin.*

UNITED STATES OF AMERICA, *District of Louisiana:*

Personally appeared before me, the undersigned authority, W. L. Catlin, a resident of the city of New Orleans, who, being duly sworn, deposes and says that he was in full sympathy

with the so-called Fusion party at the last general election of November 4, 1872, in the State of Louisiana; that he was during the same year an intimate personal and business friend of B. P. Blanchard, then State registrar of voters, and, as such, aided him in many ways in carrying out his plans for securing the success of the Fusion party at said election, and that, among other things, he aided in the preparation, labeling, and supplying with stationery, &c., the regular ballot-boxes for said election, and attended to their distribution to the various wards; there were in all 117 ballot-boxes used in the city of New Orleans; and that, in addition thereto, he attended to the distribution of sundry additional or duplicate boxes on Sunday night, November 3, for use at the said election, as he understood, to further promote the success of said party by substituting or otherwise, and delivered some of them personally to the parties whom it was intended should use them.

W. L. CATLIN.

Sworn to and subscribed before me this 2d day of September, 1873.

F. A. WOLFLEY,
*United States Commissioner.*

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*Sworn statement of John P. Montamat, justice of the peace of New Orleans.*

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that, on this 8th day of September, A. D. 1873, personally appeared before me, a United States commissioner in and for the district of Louisiana, John P. Montamat, of the city and State aforesaid, who, being first duly sworn, deposes and says that during the month of November, 1872, and for four years previously, he was a justice of the peace in the parish of Orleans; that, in the month aforesaid, and after the election held in this parish for governor and other State and parochial officers, the precise day affiant does not remember, but it was while the votes cast at the said election were being counted at the State-house at the Mechanics' Institute, one Jack Wharton, of said city of New Orleans, came to affiant's house, No. 33 Exchange alley, in the said city, and requested affiant to come with him to a certain place in said city to administer the oath to the supervisor of election in and for the parish of Madison; that said affiant went at the request of said Jack Wharton, who took him to a house situated on Gravier street, near Baronne street; that the entry doors were closed; but at the signal given by said Jack Wharton (being three consecutive and hard raps) the doors were opened; that in a room in said house affiant saw one W. J. Cahoone, who, affiant was then and there informed, was the supervisor of election for the parish of Madison, appointed by H. C. Warmoth, governor of Louisiana; that said Cahoone told affiant that he wished affiant to swear him to the returns of the late election in said parish; that affiant then saw several persons who were making out tally-lists of the returns of the election for the said parish of Madison; that the tally-lists appeared to be signed in blank by the commissioners of election; that affiant inquired of said Cahoone how it was that he had not prepared a list and returns in the parish where he came from, as he was required to do as supervisor; that said Cahoone told affiant he could not count the votes there, as it was a strong Republican parish; that he had to run away to New Orleans, because he wanted to count the votes and return only such as he saw fit, and he was determined to have it his own way, and return only such persons as he thought proper: that affiant finally swore said Cahoone to several tally-lists and returns, and affiant further says that the greater part of the tally-lists were in blank when he swore said Cahoone to them.

JOHN P. MONTAMAT.

UNITED STATES OF AMERICA,
*District of Louisiana:*

On this 8th day of September, A. D. 1873, before the undersigned, United States commissioner, personally appeared John P. Montamat, who, being first duly sworn, on oath declares that the statements by him made in the foregoing affidavit, to which his name is subscribed, are true and correct: so help him God.

WILLIAM GRANT,
*United States Commissioner.*

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*Sworn statement of Thomas J. M. Carey, chairman of committee on naturalizaton for Fusion party.*

NEW ORLEANS, *September* 6, 1873.

Personally appeared before me, William Grant, United States commissioner in and for the district of Louisiana, duly commissioned and qualified, Thomas J. M. Carey, who, after being duly sworn according to law, deposes and says:

I was appointed chairman of the committee on naturalization in the Ninth ward of the city of New Orleans by the Democratic and Fusion parties, and performed the duties assigned me during the last registration and election.

Our instructions were to naturalize all applicants, whether entitled to naturalization by law or not. The fourth and eighth district courts were reported as being favorable to issuing certificates to Republicans, and the first, second, and sixth district courts were favorable to Democrats and Fusionists.

When we would find applicants to occupy the first, second, and sixth district courts, we would then go to the eighth district court and represent ourselves as Republicans. Not an applicant was refused in the first, second, and sixth district courts.

The Democratic or Fusion party furnished the blanks for the first, second, and sixth distritc courts, and the Republicans were reported as having furnishing the blanks for the eighth district court. In the first, second, and sixth district courts, if a party was not vouched for by the naturalization committee, the judge would subject him to a rigid examination, and if he succeeded in getting the order of the court, the clerk would not issue the certificate of naturalization without being paid for it. When parties were vouched for by the committee of which I was the chairman, few questions were asked by the judges, and no charge was made by the clerks. When we had few applicants we would take the same parties under different assumed names and get certificates of naturalization for them.

When we had doubts of the parties, we would retain the certificates and have them registered. In other cases the parties would be allowed to retain them, Our committee aided all applicants who were favorable to the Democratic or fusion ticket, whether they resided in the ninth ward or not. Our instruction also required us to explain to all applicants what questions would be asked them by the judges. Our committee were employed in this service about one month and a half previous to the closing of registration, and, to the best of my knowledge and belief, caused at least 2,000 fraudulent naturalization certificates to be issued, to be voted on on the day of election for the Democratic or fusion ticket.

I was appointed commissioner for the poll corner of Moreau and Louisa streets by B. P. Blanchard, esq., registrar of voters, on the recommendation of the Democratic parish committee and the ninth ward auxiliary club.

On the day previous to last election the commissioners of election were ordered to assemble at the Mechanics' Institute, to receive instructions for the day of election. We were instructed to place every impediment in the way of voters who were not fusionists by making them sign their names, demanding the numbers of their residences, or any other question to annoy them, and lastly to refer them to the office of the ward supervisor before receiving their ballots, so as to harass and annoy them into abandoning the attempt to vote.

On the day of election the orders of the registrar of voters were faithfully carried out—in fact, the commissioners went further. When parties had the fusion tickets in their hands they were taken without question; when tickets were folded and the applicants not known to be favorable, they would be subjected to an inspection under the plea that the commissioners must be certain that the voter is aware what tickets he is voting. If the folded ticket proved to be Republican, we would act as indicated by instructions; if Democratic, it would be deposited in the ballot-box. We kept a correct account of every ballot deposited in the box. In cases where we were compelled to receive the vote of a Republican, whether white or colored, we would write in large characters on his certificate so as to attract attention if attempt was made to vote a second time; but when a fusionist presented his certificate, the indorsement required by law to be made on certificates would be written in small characters on the corner, so as to facilitate him in repeating.

When a fusionist presented himself a second time on a certificate that had already been voted on, one of the fusion commissioners, who were placed at each poll, would hold the certificate in his hand so as to conceal the former indorsement, and call out to the United States inspectors, two of whom were placed at each polling-place, saying, "This is all right." If, as in some cases, they would take the certificate in hand and discover the former indorsement, the ballot would be refused; this, however, would be rarely the case.

There were about 600 fraudulent votes polled in the seventh ward, about 600 in the eighth ward, and about 1,200 in the ninth ward, making in all 2,400 fraudulent votes illegally polled on the day of election for the Democratic fusion ticket.

THOMAS J. M. CAREY,
*Corner of Moreau and Louisa Streets.*

Sworn to and subscribed before me September 6, 1873.

WILLIAM GRANT,
*United States Commissioner, District of Louisiana.*

*Statement showing number of registered voters, colored and white, at last election, as taken under Democratic fusion auspices.*

Statement of the number of voters remaining on the registry-books, October 28, 1872, as compiled from the final reports of supervisors of registration in each parish, State of Louisiana.

| Parish. | White. | Colored. | Total. |
|---|---|---|---|
| Ascension | 1,148 | 3,296 | 4,444 |
| Assumption | 2,207 | 2,176 | 4,383 |
| Avoyelles | 2,139 | 2,188 | 4,327 |
| Baton Rouge, East | 1,489 | 1,559 | 3,048 |
| Baton Rouge, West | 397 | 859 | 1,256 |
| Bienville | 916 | 715 | 1,631 |
| Bossier* | | | |
| Caddo | 1,549 | 3,134 | 4,683 |
| Calcasieu | 702 | 166 | 868 |
| Caldwell | 541 | 586 | 1,127 |
| Cameron | 263 | 31 | 294 |
| Carroll | 572 | 2,073 | 2,645 |
| Catahoula | 1,065 | 992 | 2,057 |
| Claiborne | 1,373 | 1,293 | 2,666 |
| Concordia | 307 | 2,577 | 2,384 |
| De Soto | 1,004 | 1,403 | 2,407 |
| Feliciana, East | 1,100 | 2,351 | 3,451 |
| Feliciana, West | 521 | 2,084 | 2,605 |
| Franklin | 522 | 507 | 1,029 |
| Grant | 616 | 733 | 1,349 |
| Iberia | 1,140 | 1,241 | 2,381 |
| Iberville | 740 | 3,296 | 4,036 |
| Jackson | 1,101 | 822 | 1,923 |
| Jefferson | 1,396 | 2,866 | 4,262 |
| La Fayette | 1,115 | 897 | 2,012 |
| La Fourche | 2,302 | 2,407 | 4,709 |
| Livingston † | | | |
| Madison | 1,718 | 2,207 | 2,725 |
| Morehouse | 694 | 1,339 | 2,033 |
| Natchitoches | 1,517 | 1,833 | 3,350 |
| Orleans ‡ | 35,782 | 19,244 | 55,026 |
| Ouachita | 970 | 2,311 | 3,281 |
| Plaquemines | 673 | 1,699 | 2,372 |
| Point Coupee | 1,039 | 2,807 | 3,846 |
| Rapides | 1,719 | 1,629 | 3,348 |
| Red River | 441 | 966 | 1,407 |
| Richland | 599 | 644 | 1,243 |
| Sabine | 711 | 151 | 862 |
| Saint Bernard | 500 | 570 | 1,070 |
| Saint Charles | 300 | 1,850 | 2,150 |
| Saint Helena † | | | |
| Saint James | 703 | 2,120 | 2,823 |
| Saint John Baptist | 817 | 1,720 | 2,537 |
| Saint Landry | 3,718 | 3,641 | 7,359 |
| Saint Martin | 1,035 | 926 | 1,961 |
| Saint Mary | 1,117 | 1,941 | 3,058 |
| Saint Tammany | 624 | 700 | 1,324 |
| Tangipahoa | 917 | 613 | 1,530 |
| Tensas | 368 | 3,146 | 3,514 |
| Terre Bonne § | | | |
| Union | 1,788 | 872 | 2,620 |
| Vermillion | 828 | 282 | 1,110 |
| Vernon | 717 | 79 | 796 |
| Washington | 543 | 168 | 711 |
| Webster | 854 | 862 | 1,716 |
| Winn | 755 | 135 | 890 |
| Total | 86,672 | 94,407 | 181,179 |

*Bossier Parish, population by census of 1870, white, 3,505; colored, 9,170. Per report of United States supervisor the registered vote for 1872 was, white, 587; colored, 1,795.

† Vote of Saint Helena and Livingston Parishes small.

‡ In Orleans Parish it is well known that the registration of white votes for 1872 was excessive. See Blanchard's statement.

§ Terre Bonne Parish, by census of 1870, white, 6,080; colored, 6,172. Report of United States supervisor had registered voters, colored, 1,608; white, 1,201.

STATE OF LOUISIANA,
OFFICE STATE REGISTRAR OF VOTERS,
*New Orleans, September* 8, 1873.

I hereby certify that the foregoing statement has been carefully compiled by me from the final reports of supervisors of registration in the parishes above named, as made to B. P. Blanchard, State registrar of voters, in the year 1872, at which time I was chief clerk to said

B. P. Blanchard, and that the original reports and final reports are now on file in the office of State registrar of voters.

WALTER S. LONG,
*Clerk State Registrar of Voters.*

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STATE OF LOUISIANA,
OFFICE STATE REGISTRAR OF VOTERS,
*New Orleans, September* 8, 1873.

I hereby certify that the original final reports of supervisors of registration, from which the foregoing has been compiled, are on file in this office, and that the compilation is correctly made.

THOMAS LYNNE,
*State Registrar of Voters.*

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NOTE.—The registration of 1870 showed over 23,000 excess of colored voters over white. The above registration was taken under Democratic auspices; hence the great reduction. Still, it will be seen giving in 1872 a colored registered vote over the white of 7,735.

The Republicans were not allowed in New Orleans a single commissioner of election at any poll.

It is not denied that nearly every colored man in the State voted the Republican ticket, and that at least eight or ten thousand whites so voted, Grant and Kellogg running, as shown, even by fusion returns, far ahead of their ticket.

The supreme court of the State has, since the 1st of January last, rendered no less than fifteen decisions, fully sustaining the legality of the Kellogg government.

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## MINORITY REPORT.

Mr. Lamar, from the Committee on Elections, submitted the following as the views of the minority.

The undersigned, unable to concur in the conclusion of the majority of the committee, ask leave to submit the following views:

Mr. Pinchback, in support of his claim to a seat, presents a certificate signed by himself as acting governor of Louisiana, and dated December 15, 1872, certifying that he, Pinchback, was elected. He also presents a supplemental certificate from one W. P. Kellogg, who certifies that he is the governor of the State of Louisiana, and that according to the returns in his office Pinchback was elected.

On the other hand George A. Sheridan presents a certificate bearing date December 4, 1872, from H. C. Warmoth, who was the undisputed governor of Louisiana, declaring George A. Sheridan duly elected.

Each of the contestants, therefore, having a certificate of election, purporting to emanate from the legal authority of the State, the committee, under the instructions of the House, have examined the facts of the case in order to determine which of the two claimants, if either, is entitled to said seat.

In the examination of such cases, two questions usually arise: the first relating to the fact of the election, and the second relating to the returns which are the legal evidence of its result.

According to all the proofs, there was, in this case, an election—orderly, fair, and legal. It is not proven that voters in attendance were prevented from exercising the elective franchise by violence or intimidation, or any other cause. It is not denied that the forms of the election, the appointment and qualification of registers, supervisors, and other officers, the establishment of election precincts, the preparation of poll-lists, the balloting, the making up and transmission of returns, were all in accordance with the provisions of law.

There was, therefore, a legal election. At that election there were

but two candidates for Congress for the State at large, P. B. S. Pinchback and George A. Sheridan. As there is no pretense that these two candidates received the same number of votes, it follows that one of them is elected, and entitled to the seat on this floor.

The committee are of the unanimous opinion that upon the case presented to them Mr. Pinchback has not shown himself entitled to said seat. His only claim rests upon a statement of a so-called board of canvassers, known as the "Lynch board," declaring him to have received a majority of the votes cast. They unanimously agree in the notorious fact that the men known as the Lynch board never had possession of the election returns, and therefore never canvassed them.

We call attention here to the sworn testimony of John Lynch, the chairman of the board, as found in the Senate Report on Privileges and Elections, No. 457.

This man, speaking of the action of that so called board, testifies as follows (page 165 of volume before alluded to):

Q. Did you have any official returns before you, furnished under the laws of Louisiana?—A. Did we have any?

Q. Yes; did you have any?—A. Not unless those I have stated.

Q. Did you have any at all?—A. No, sir; I do not think we had.

Q. You had no official returns furnished in pursuance of the laws of Louisiana before you?—A. No, sir.

Q. You made your canvass without those?—A. Yes, sir; we came to the conclusion that there was no official returns in existence, as the law had been trampled upon.

Q. Would the law having been trampled upon prevent an official return from being an official return as well?—A. No, sir; I suppose not.

Q. Then there were official returns somewhere?—A. Yes, sir.

Q. When, as you stated here, you gave notice to Governor Warmoth, did you not suppose he had official returns?—A. Yes, sir.

Q. Then there were official returns?—A. Yes, sir.

Q. They were not before you?—A. No, sir.

Q. You counted votes in your estimate which were not polled at all, did you?—A. Yes, sir.

Q. Well, upon what ground?—A. On the authority of the United States law, and on the ground or principle of justice.

Again, in speaking of the action of his board, he said:

We had not the technical evidence before us. We were what I considered in the midst of a revolution, and in order to get at the result of the election as near as we could, as an officer acting, I availed myself of every kind of information within my reach, not only the affidavits, but my former knowledge of the political divisions of the inhabitants of the State, as corroborative of the evidence placed before us.

And on page 158 he thus testifies:

By Mr. CARPENTER:

Q. You estimated it, then, upon the basis of what you thought the vote ought to have been?—A. Yes, sir. That was just the fact, and I think on the whole we were pretty correct.

We also call attention to the testimony of George E. Bovee, a member of the Lynch board, as given on page 435 of the same document:

Q. I ask whether that board had any of the returns required by the laws of the State to be laid before the governor of the State, and by the governor before the returning-board?—A. We received no statements of votes whatever from the governor. He was the proper party to lay them before us.

And on page 440 he thus testifies:

Q. I will ask if the official returns of the election have been deposited in your office, or any offer of them up to this time, by Governor Warmoth or anybody on the other side?—A. I have never seen a paper connected with their count.

General James Longstreet, another member of this pretended board, thus testifies (page 251, Senate report):

Q. I will ask you whether, as a member of that board, or in any capacity, you made a demand upon Governor Warmoth for the official returns of the election at the time or about

the time of Judge Durell's decision; and, if so, state the circumstances.—A. I made a demand in company with Mr. Bovee; we were appointed by the board a committee to make a demand upon Governor Warmoth on the day, I think, when the decision was rendered.

Q. Were the returns furnished?—A. They were not.

Q. None of them?—A. None of them.

According to the sworn admissions of a majority of the men composing this pretended board, it is shown that it was never in possession of the lawful returns of the election.

Mr. Webster, in Luther *vs.* Borden (7 How. S. C. Rep., p. 30), states briefly the principles of American politics:

Suffrage is a delegation of political power to some individual. Hence the right must be guarded and protected against force and fraud. Another principle is that the qualification which entitles a man to vote must be prescribed by previous law directing how it is to be exercised; and also that the results must be certified to some central power, so that the vote may tell. We know of no other principle.

To validate an election there must be *votes* legally deposited by legal voters, and legally counted, and the result legally declared.

In Louisiana there were election laws—there was an election legally held. But in the certification of Mr. Pinchback there was no count of votes by any authority whatever. The legality of the Lynch board is a secondary question, so long as the fact exists that they were entirely without returns. A court legally constituted cannot act without a case, without parties, without pleading, without evidence.

The Lynch board have simply appointed a Congressman; not determined who had been legally chosen.

The committee having unanimously reached the conclusion that Mr. Pinchback has not been shown to be elected, the question arises, was his competitor, G. A. Sheridan, elected?

Mr. Sheridan presents a certificate of his election, in due form, signed by Governor Warmoth, and dated December 4, 1872. Though Governor Warmoth was undoubtedly governor of Louisiana at the time, and the legal custodian of the returns, it was admitted in the argument before the committee that the returns had not been counted. This makes it necessary to go behind the certificate of the governor and inquire into the merits of the case as affected by the law and the facts.

By the laws of Louisiana in force at the time of this election it was required that—

SEC. 53. *Be it further enacted, &c.*, That, immediately upon the close of the polls on the day of election, the commissioners of election at each poll or voting-place shall seal the ballot-box by pasting slips of paper over the key-hole and the opening in the top thereof, and fastening the same with sealing-wax, on which they shall impress a seal, and they shall write the names of the commissioners on the said slips of paper; they shall forthwith convey the ballot-box so sealed to the office of, and deliver said ballot-box to, the supervisor of registration for the parish, who shall keep his office open for that purpose from the hour of the close of the election until all the votes from the several polls or voting-places of the precinct shall have been received and counted. The supervisor of registration shall immediately, upon the receipt of said ballot-box, note its condition, and the state of the seals and fastenings thereof, and shall then, in the presence of the commissioners of election and three citizens, freeholders of the parish for such poll or voting-place, open the ballot-box and count the ballots therein, and make a list of all the names of the persons and offices voted for the number of votes for each person, the number of ballots in the box, and the number of ballots rejected, and the reason therefor. Said statements shall be made in triplicate, and each copy thereof shall be signed and sworn to by the commissioners of election of the poll and by the supervisor of registration. As soon as the supervisor of registration shall have made the statement above provided for for each poll in his precinct or parish, and it shall have been sworn to and subscribed as above directed, the supervisor of registration shall inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll and one copy of the list of persons voting at each poll, and one copy of any statements as to violence or disturbance, bribery, or corruption, or other offenses specified in section 29 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes, and shall send such package by mail, properly and plainly

addressed, to the governor of the State. The supervisor of registration shall send a second copy of said statement to the governor of the State by the next most safe and speedy mode of conveyance, and shall retain the third copy in his own possession.

SEC. 54. *Be it further enacted, &c.*, That the governor, the lieutenant-governor, the secretary of state, and John Lynch, and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God."

Within ten days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state. They shall continue in session until such returns have been completed. The governor shall at such meetings open, in the presence of the said returning officers, the statements of the supervisors of registration, and the said returning officers shall from said statements canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the election thus made and promulgated shall be *prima-facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected.

The governor shall within thirty days thereafter issue commissions to all officers thus declared elected who are required by law to be commissioned.

SEC. 55. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting-place there shall be received the statement of any supervisor of registration, assistant supervisor of registration, or commissioner of election, in form as required by section twenty-nine of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable and full vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statements they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns. The returning officers may appoint such clerks as may be necessary, for a length of time not to exceed thirty days, who shall be paid $5 per day each for the time actually served, which time shall be specified in a written account, subscribed and sworn to by such clerk, and approved by the returning officers. The auditor of public accounts shall issue his warrant upon the treasury for the amount of such account so subscribed and sworn to and approved.

We repeat that it is proven that the election was held in strict conformity with these provisions, and that the governor came into the lawful possession of all the official returns of that election. At this point

the contest arose over the question as to who constituted the legal returning-board of the State—the one called the Lynch board, or the other, the Warmoth board. Pending that contest, the governor, on the 20th November, 1872, approved an act passed at the preceding session of the legislature of the State, repealing the act under which the two rival boards were contesting for the returns, and providing "that five persons, to be elected by the senate from all political parties, shall be the returning-officers," &c. On the same day he issued a proclamation calling a session of the legislature.

This last-named statute abolished the existing board, and therefore makes it unnecessary here to discuss which of the two was the legal one.

Under the authority vested in him by the constitution of Louisiana to fill vacancies during the vacation of the legislature, the governor proceeded to fill the board provided for by the act approved November 20, 1872, appointing De Feriet and others, known as the De Feriet board. On the 4th of December the governor submitted the official returns, (of which he had retained the custody.) That board, on the 4th of December, made the compilation and canvass, declaring McEnery and the candidates on the same ticket elected by 9,000 majority, and declaring, also, who had been elected members of the legislature; which result was proclaimed by the governor and certified to by the secretary of state, in pursuance of the election law of Louisiana.

In consequence of the seizure of the State capitol of Louisiana by a Federal marshal and United States soldiers, in obedience to an order of a Federal district judge, the members and senators returned by the De Feriet board met at the city hall, in New Orleans, and on the 9th day of December organized as a legislature, and was so recognized by the governor. On the 11th of December the senate elected a board of returning officers, known as the Foreman board. To this board the official returns were delivered by the secretary of the De Feriet board.* This board immediately proceeded to the canvass and compilation of these official returns, and made an official report of the result in due form, as required by law.† These compiled returns were submitted to the Senate Committee on Privileges and Elections during their investigation into the facts of the election now under consideration. The original returns were also before that committee, and unimpeached by the parties contesting the result, except a statement by John Ray, that in four parishes the names of the commissioners were forged, which fact, if it be a fact, was admitted not to have changed the result.

The official report referred to may be found on page 82 of Senate document No. 476.

We append the following copy of so much as gives the returns of the election of Congressman for the State at large:

* See Senate Report, No. 467, p. 76. † *Ibid.*, pp. 76, 77.

*Compiled returns of an election held in the State of Louisiana on the 4th day of November, A. D. 1872, pursuant to "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved March 16, 1870.*

| Parishes. | G. A. Sheridan. | P. B. S. Pinchback. | Scattering. |
|---|---|---|---|
| Ascension | 663 | 1,814 | ..... |
| Assumption | 1,815 | 1,377 | ..... |
| Avoyelles | 1,795 | 1,370 | ..... |
| East Baton Rouge | 1,339 | 848 | ..... |
| West Baton Rouge | 286 | 828 | ..... |
| Bienville | 945 | 423 | ..... |
| Bossier | 952 | 554 | ..... |
| Caddo | 1,802 | 1,509 | ..... |
| Calcasieu | 584 | 53 | ..... |
| Caldwell | 449 | 377 | ..... |
| Cameron | 176 | 33 | 1 |
| Carroll | 382 | 1,473 | ..... |
| Catahoula | 833 | 710 | ..... |
| Claiborne | 1,312 | 919 | ..... |
| Concordia | 164 | 1,625 | ..... |
| De Soto | 1,441 | 445 | ..... |
| East Feliciana | 673 | 1,661 | ..... |
| West Feliciana | 259 | 1,454 | ..... |
| Franklin | 539 | 253 | ..... |
| Grant | 513 | 401 | ..... |
| Iberia | (*) | (*) | (*) |
| Iberville | ..... | ..... | ..... |
| Jackson | 745 | 559 | ..... |
| Jefferson | 979 | 1,702 | ..... |
| La Fayette | 884 | 476 | ..... |
| La Fourche | 1,783 | 1,705 | ..... |
| Livingston | 543 | 149 | ..... |
| Madison | 740 | 1,315 | ..... |
| Morehouse | 682 | 646 | ..... |
| Natchitoches | 1,245 | 547 | ..... |
| Ouachita | 750 | 1,547 | ..... |
| Plaquemines | 464 | 1,033 | ..... |
| Point Coupee | 1,095 | 1,569 | ..... |
| Rapides | 1,960 | 1,163 | ..... |
| Red River | 362 | 211 | ..... |
| Richland | 706 | 982 | ..... |
| Sabine | 735 | 60 | ..... |
| Saint Bernard | 419 | 349 | ..... |
| Saint Charles | 110 | 382 | ..... |
| Saint Helena | 702 | 376 | ..... |
| Saint James | ..... | ..... | ..... |
| Saint John Baptist | 520 | 1,165 | ..... |
| Saint Landry | 2,808 | 1,365 | ..... |
| Saint Martin | (*) | (*) | (*) |
| Saint Mary | 1,073 | 1,491 | ..... |
| Saint Tammany | ..... | ..... | ..... |
| Tangipahoa | 779 | 598 | ..... |
| Tensas | 166 | 2,296 | ..... |
| Terre Bonne | ..... | ..... | ..... |
| Union | 1,365 | 470 | ..... |
| Vernon | 704 | 21 | ..... |
| Vermillion | 676 | 225 | ..... |
| Washington | 447 | 176 | ..... |
| Webster | 974 | 620 | ..... |
| Winn | 511 | 103 | ..... |
| Orleans— | | | |
| First ward | 1,764 | 636 | 12 |
| Second ward | 2,136 | 819 | ..... |
| Third ward | 3,031 | 1,583 | 1 |
| Fourth ward | 1,365 | 814 | ..... |
| Fifth ward | 1,981 | 1,318 | 1 |
| Sixth ward | 1,444 | 816 | ..... |
| Seventh ward | 1,575 | 1,590 | 1 |
| Eighth ward | 1,543 | 498 | ..... |
| Ninth ward | 2,038 | 539 | 1 |
| Tenth ward | 2,065 | 751 | 25 |
| Eleventh ward | 1,876 | 828 | ..... |
| Twelfth ward | 793 | 428 | ..... |
| Thirteenth ward | 521 | 438 | ..... |
| Fourteenth ward | 203 | 253 | ..... |
| Fifteenth ward | 791 | 952 | 1 |
| Total | 65,016 | 54,402 | 43 |

Majority for Sheridan, 10,614.

* Polls excluded.

Our instructions were to naturalize all applicants, whether entitled to naturalization by law or not. The fourth and eighth district courts were reported as being favorable to issuing certificates to Republicans, and the first, second, and sixth district courts were favorable to Democrats and Fusionists.

When we would find applicants to occupy the first, second, and sixth district courts, we would then go to the eighth district court and represent ourselves as Republicans. Not an applicant was refused in the first, second, and sixth district courts.

The Democratic or Fusion party furnished the blanks for the first, second, and sixth distritc courts, and the Republicans were reported as having furnishing the blanks for the eighth district court. In the first, second, and sixth district courts, if a party was not vouched for by the naturalization committee, the judge would subject him to a rigid examination, and if he succeeded in getting the order of the court, the clerk would not issue the certificate of naturalization without being paid for it. When parties were vouched for by the committee of which I was the chairman, few questions were asked by the judges, and no charge was made by the clerks. When we had few applicants we would take the same parties under different assumed names and get certificates of naturalization for them.

When we had doubts of the parties, we would retain the certificates and have them registered. In other cases the parties would be allowed to retain them, Our committee aided all applicants who were favorable to the Democratic or fusion ticket, whether they resided in the ninth ward or not. Our instruction also required us to explain to all applicants what questions would be asked them by the judges. Our committee were employed in this service about one month and a half previous to the closing of registration, and, to the best of my knowledge and belief, caused at least 2,000 fraudulent naturalization certificates to be issued, to be voted on on the day of election for the Democratic or fusion ticket.

I was appointed commissioner for the poll corner of Moreau and Louisa streets by B. P. Blanchard, esq., registrar of voters, on the recommendation of the Democratic parish committee and the ninth ward auxiliary club.

On the day previous to last election the commissioners of election were ordered to assemble at the Mechanics' Institute, to receive instructions for the day of election. We were instructed to place every impediment in the way of voters who were not fusionists by making them sign their names, demanding the numbers of their residences, or any other question to annoy them, and lastly to refer them to the office of the ward supervisor before receiving their ballots, so as to harass and annoy them into abandoning the attempt to vote.

On the day of election the orders of the registrar of voters were faithfully carried out—in fact, the commissioners went further. When parties had the fusion tickets in their hands they were taken without question; when tickets were folded and the applicants not known to be favorable, they would be subjected to an inspection under the plea that the commissioners must be certain that the voter is aware what tickets he is voting. If the folded ticket proved to be Republican, we would act as indicated by instructions; if Democratic, it would be deposited in the ballot-box. We kept a correct account of every ballot deposited in the box. In cases where we were compelled to receive the vote of a Republican, whether white or colored, we would write in large characters on his certificate so as to attract attention if attempt was made to vote a second time; but when a fusionist presented his certificate, the indorsement required by law to be made on certificates would be written in small characters on the corner, so as to facilitate him in repeating.

When a fusionist presented himself a second time on a certificate that had already been voted on, one of the fusion commissioners, who were placed at each poll, would hold the certificate in his hand so as to conceal the former indorsement, and call out to the United States inspectors, two of whom were placed at each polling-place, saying, "This is all right." If, as in some cases, they would take the certificate in hand and discover the former indorsement, the ballot would be refused; this, however, would be rarely the case.

There were about 600 fraudulent votes polled in the seventh ward, about 600 in the eighth ward, and about 1,200 in the ninth ward, making in all 2,400 fraudulent votes illegally polled on the day of election for the Democratic fusion ticket.

THOMAS J. M. CAREY,
*Corner of Moreau and Louisa Streets.*

Sworn to and subscribed before me September 6, 1873.

WILLIAM GRANT,
*United States Commissioner, District of Louisiana.*

*Statement showing number of registered voters, colored and white, at last election, as taken under Democratic fusion auspices.*

Statement of the number of voters remaining on the registry-books, October 28, 1872, as compiled from the final reports of supervisors of registration in each parish, State of Louisiana.

| Parish. | White. | Colored. | Total. |
|---|---|---|---|
| Ascension | 1,148 | 3,296 | 4,444 |
| Assumption | 2,207 | 2,176 | 4,383 |
| Avoyelles | 2,139 | 2,188 | 4,327 |
| Baton Rouge, East | 1,489 | 1,559 | 3,048 |
| Baton Rouge, West | 397 | 859 | 1,256 |
| Bienville | 916 | 715 | 1,631 |
| Bossier* | ..... | ..... | ..... |
| Caddo | 1,549 | 3,134 | 4,683 |
| Calcasieu | 702 | 166 | 868 |
| Caldwell | 541 | 586 | 1,127 |
| Cameron | 263 | 31 | 294 |
| Carroll | 572 | 2,073 | 2,645 |
| Catahoula | 1,065 | 992 | 2,057 |
| Claiborne | 1,373 | 1,293 | 2,666 |
| Concordia | 307 | 2,577 | 2,384 |
| De Soto | 1,004 | 1,403 | 2,407 |
| Feliciana, East | 1,100 | 2,351 | 3,451 |
| Feliciana, West | 521 | 2,084 | 2,605 |
| Franklin | 522 | 507 | 1,029 |
| Grant | 616 | 733 | 1,349 |
| Iberia | 1,140 | 1,241 | 2,381 |
| Iberville | 740 | 3,296 | 4,036 |
| Jackson | 1,101 | 822 | 1,923 |
| Jefferson | 1,396 | 2,866 | 4,262 |
| La Fayette | 1,115 | 897 | 2,012 |
| La Fourche | 2,302 | 2,407 | 4,709 |
| Livingston † | ..... | ..... | ..... |
| Madison | 1,718 | 2,207 | 2,725 |
| Morehouse | 694 | 1,339 | 2,033 |
| Natchitoches | 1,517 | 1,833 | 3,350 |
| Orleans ‡ | 35,782 | 19,244 | 55,026 |
| Ouachita | 970 | 2,311 | 3,281 |
| Plaquemines | 673 | 1,699 | 2,372 |
| Point Coupee | 1,039 | 2,807 | 3,846 |
| Rapides | 1,719 | 1,629 | 3,348 |
| Red River | 441 | 966 | 1,407 |
| Richland | 599 | 644 | 1,243 |
| Sabine | 711 | 151 | 862 |
| Saint Bernard | 500 | 570 | 1,070 |
| Saint Charles | 300 | 1,850 | 2,150 |
| Saint Helena † | ..... | ..... | ..... |
| Saint James | 703 | 2,120 | 2,823 |
| Saint John Baptist | 817 | 1,720 | 2,537 |
| Saint Landry | 3,718 | 3,641 | 7,359 |
| Saint Martin | 1,035 | 926 | 1,961 |
| Saint Mary | 1,117 | 1,941 | 3,058 |
| Saint Tammany | 624 | 700 | 1,324 |
| Tangipahoa | 917 | 613 | 1,530 |
| Tensas | 368 | 3,146 | 3,514 |
| Terre Bonne § | ..... | ..... | ..... |
| Union | 1,788 | 872 | 2,620 |
| Vermillion | 828 | 282 | 1,110 |
| Vernon | 717 | 79 | 796 |
| Washington | 543 | 168 | 711 |
| Webster | 854 | 862 | 1,716 |
| Winn | 755 | 135 | 890 |
| Total | 86,672 | 94,407 | 181,179 |

*Bossier Parish, population by census of 1870, white, 3,505; colored, 9,170. Per report of United States supervisor the registered vote for 1872 was, white, 587; colored, 1,795.

† Vote of Saint Helena and Livingston Parishes small.

‡ In Orleans Parish it is well known that the registration of white votes for 1872 was excessive. See Blanchard's statement.

§ Terre Bonne Parish, by census of 1870, white, 6,080; colored, 6,172. Report of United States supervisor had registered voters, colored, 1,608; white, 1,201.

STATE OF LOUISIANA,
OFFICE STATE REGISTRAR OF VOTERS,
*New Orleans, September* 8, 1873.

I hereby certify that the foregoing statement has been carefully compiled by me from the final reports of supervisors of registration in the parishes above named, as made to B. P. Blanchard, State registrar of voters, in the year 1872, at which time I was chief clerk to said

B. P. Blanchard, and that the original reports and final reports are now on file in the office of State registrar of voters.

WALTER S. LONG,
*Clerk State Registrar of Voters.*

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STATE OF LOUISIANA,
OFFICE STATE REGISTRAR OF VOTERS,
*New Orleans, September* 8, 1873.

I hereby certify that the original final reports of supervisors of registration, from which the foregoing has been compiled, are on file in this office, and that the compilation is correctly made.

THOMAS LYNNE,
*State Registrar of Voters.*

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NOTE.—The registration of 1870 showed over 23,000 excess of colored voters over white. The above registration was taken under Democratic auspices; hence the great reduction. Still, it will be seen giving in 1872 a colored registered vote over the white of 7,735.

The Republicans were not allowed in New Orleans a single commissioner of election at any poll.

It is not denied that nearly every colored man in the State voted the Republican ticket, and that at least eight or ten thousand whites so voted, Grant and Kellogg running, as shown, even by fusion returns, far ahead of their ticket.

The supreme court of the State has, since the 1st of January last, rendered no less than fifteen decisions, fully sustaining the legality of the Kellogg government.

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## MINORITY REPORT.

Mr. Lamar, from the Committee on Elections, submitted the following as the views of the minority.

The undersigned, unable to concur in the conclusion of the majority of the committee, ask leave to submit the following views:

Mr. Pinchback, in support of his claim to a seat, presents a certificate signed by himself as acting governor of Louisiana, and dated December 15, 1872, certifying that he, Pinchback, was elected. He also presents a supplemental certificate from one W. P. Kellogg, who certifies that he is the governor of the State of Louisiana, and that according to the returns in his office Pinchback was elected.

On the other hand George A. Sheridan presents a certificate bearing date December 4, 1872, from H. C. Warmoth, who was the undisputed governor of Louisiana, declaring George A. Sheridan duly elected.

Each of the contestants, therefore, having a certificate of election, purporting to emanate from the legal authority of the State, the committee, under the instructions of the House, have examined the facts of the case in order to determine which of the two claimants, if either, is entitled to said seat.

In the examination of such cases, two questions usually arise: the first relating to the fact of the election, and the second relating to the returns which are the legal evidence of its result.

According to all the proofs, there was, in this case, an election—orderly, fair, and legal. It is not proven that voters in attendance were prevented from exercising the elective franchise by violence or intimidation, or any other cause. It is not denied that the forms of the election, the appointment and qualification of registers, supervisors, and other officers, the establishment of election precincts, the preparation of poll-lists, the balloting, the making up and transmission of returns, were all in accordance with the provisions of law.

There was, therefore, a legal election. At that election there were

but two candidates for Congress for the State at large, P. B. S. Pinc back and George A. Sheridan. As there is no pretense that these tw candidates received the same number of votes, it follows that one of them is elected, and entitled to the seat on this floor.

The committee are of the unanimous opinion that upon the case pr sented to them Mr. Pinchback has not shown himself entitled to sai seat. His only claim rests upon a statement of a so-called board of ca vassers, known as the "Lynch board," declaring him to have receive a majority of the votes cast. They unanimously agree in the notorio fact that the men known as the Lynch board never had possession the election returns, and therefore never canvassed them.

We call attention here to the sworn testimony of John Lynch, tl chairman of the board, as found in the Senate Report on Privileges an Elections, No. 457.

This man, speaking of the action of that so called board, testifies a follows (page 165 of volume before alluded to):

Q. Did you have any official returns before you, furnished under the laws of Louisiana? A. Did we have any?

Q. Yes; did you have any?—A. Not unless those I have stated.

Q. Did you have any at all?—A. No, sir; I do not think we had.

Q. You had no official returns furnished in pursuance of the laws of Louisiana befc you?—A. No, sir.

Q. You made your canvass without those?—A. Yes, sir; we came to the conclusion tl there was no official returns in existence, as the law had been trampled upon.

Q. Would the law having been trampled upon prevent an official return from being official return as well?—A. No, sir; I suppose not.

Q. Then there were official returns somewhere?—A. Yes, sir.

Q. When, as you stated here, you gave notice to Governor Warmoth, did you not suppc he had official returns?—A. Yes, sir.

Q. Then there were official returns?—A. Yes, sir.

Q. They were not before you?—A. No, sir.

Q. You counted votes in your estimate which were not polled at all, did you?—A. Y sir.

Q. Well, upon what ground?—A. On the authority of the United States law, and on t ground or principle of justice.

Again, in speaking of the action of his board, he said:

We had not the technical evidence before us. We were what I considered in the midst o revolution, and in order to get at the result of the election as near as we could, as an offi acting, I availed myself of every kind of information within my reach, not only the affi vits, but my former knowledge of the political divisions of the inhabitants of the State, corroborative of the evidence placed before us.

And on page 158 he thus testifies:

By Mr. CARPENTER:

Q. You estimated it, then, upon the basis of what you thought the vote ought to ha been?—A. Yes, sir. That was just the fact, and I think on the whole we were pretty c rect.

We also call attention to the testimony of George E. Bovee, a mei ber of the Lynch board, as given on page 435 of the same document:

Q. I ask whether that board had any of the returns required by the laws of the State be laid before the governor of the State, and by the governor before the returning-board? A. We received no statements of votes whatever from the governor. He was the prop party to lay them before us.

And on page 440 he thus testifies:

Q. I will ask if the official returns of the election have been deposited in your office, any offer of them up to this time, by Governor Warmoth or anybody on the other side? A. I have never seen a paper connected with their count.

General James Longstreet, another member of this pretended boar thus testifies (page 251, Senate report):

Q. I will ask you whether, as a member of that board, or in any capacity, you made demand upon Governor Warmoth for the official returns of the election at the time or abc

the time of Judge Durell's decision; and, if so, state the circumstances.—A. I made a demand in company with Mr. Bovee; we were appointed by the board a committee to make a demand upon Governor Warmoth on the day, I think, when the decision was rendered.

Q. Were the returns furnished?—A. They were not.

Q. None of them?—A. None of them.

According to the sworn admissions of a majority of the men composing this pretended board, it is shown that it was never in possession of the lawful returns of the election.

Mr. Webster, in Luther *vs.* Borden (7 How. S. C. Rep., p. 30), states briefly the principles of American politics:

Suffrage is a delegation of political power to some individual. Hence the right must be guarded and protected against force and fraud. Another principle is that the qualification which entitles a man to vote must be prescribed by previous law directing how it is to be exercised; and also that the results must be certified to some central power, so that the vote may tell. We know of no other principle.

To validate an election there must be *votes* legally deposited by legal voters, and legally counted, and the result legally declared.

In Louisiana there were election laws—there was an election legally held. But in the certification of Mr. Pinchback there was no count of votes by any authority whatever. The legality of the Lynch board is a secondary question, so long as the fact exists that they were entirely without returns. A court legally constituted cannot act without a case, without parties, without pleading, without evidence.

The Lynch board have simply appointed a Congressman; not determined who had been legally chosen.

The committee having unanimously reached the conclusion that Mr. Pinchback has not been shown to be elected, the question arises, was his competitor, G. A. Sheridan, elected?

Mr. Sheridan presents a certificate of his election, in due form, signed by Governor Warmoth, and dated December 4, 1872. Though Governor Warmoth was undoubtedly governor of Louisiana at the time, and the legal custodian of the returns, it was admitted in the argument before the committee that the returns had not been counted. This makes it necessary to go behind the certificate of the governor and inquire into the merits of the case as affected by the law and the facts.

By the laws of Louisiana in force at the time of this election it was required that—

SEC. 53. *Be it further enacted, &c.*, That, immediately upon the close of the polls on the day of election, the commissioners of election at each poll or voting-place shall seal the ballot-box by pasting slips of paper over the key-hole and the opening in the top thereof, and fastening the same with sealing-wax, on which they shall impress a seal, and they shall write the names of the commissioners on the said slips of paper; they shall forthwith convey the ballot-box so sealed to the office of, and deliver said ballot-box to, the supervisor of registration for the parish, who shall keep his office open for that purpose from the hour of the close of the election until all the votes from the several polls or voting-places of the precinct shall have been received and counted. The supervisor of registration shall immediately, upon the receipt of said ballot-box, note its condition, and the state of the seals and fastenings thereof, and shall then, in the presence of the commissioners of election and three citizens, freeholders of the parish for such poll or voting-place, open the ballot-box and count the ballots therein, and make a list of all the names of the persons and offices voted for the number of votes for each person, the number of ballots in the box, and the number of ballots rejected, and the reason therefor. Said statements shall be made in triplicate, and each copy thereof shall be signed and sworn to by the commissioners of election of the poll and by the supervisor of registration. As soon as the supervisor of registration shall have made the statement above provided for for each poll in his precinct or parish, and it shall have been sworn to and subscribed as above directed, the supervisor of registration shall inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll and one copy of the list of persons voting at each poll, and one copy of any statements as to violence or disturbance, bribery, or corruption, or other offenses specified in section 29 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes, and shall send such package by mail, properly and plainly

addressed, to the governor of the State. The supervisor of registration shall send a second copy of said statement to the governor of the State by the next most safe and speedy mode of conveyance, and shall retain the third copy in his own possession.

SEC. 54. *Be it further enacted, &c.*, That the governor, the lieutenant-governor, the secretary of state, and John Lynch, and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God."

Within ten days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state. They shall continue in session until such returns have been completed. The governor shall at such meetings open, in the presence of the said returning officers, the statements of the supervisors of registration, and the said returning officers shall from said statements canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the election thus made and promulgated shall be *prima-facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected.

The governor shall within thirty days thereafter issue commissions to all officers thus declared elected who are required by law to be commissioned.

SEC. 55. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting-place there shall be received the statement of any supervisor of registration, assistant supervisor of registration, or commissioner of election, in form as required by section twenty-nine of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable and full vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statements they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns. The returning officers may appoint such clerks as may be necessary, for a length of time not to exeeed thirty days, who shall be paid $5 per day each for the time actually served, which time shall be specified in a written account, subscribed and sworn to by such clerk, and approved by the returning officers. The auditor of public accounts shall issue his warrant upon the treasury for the amount of such account so subscribed and sworn to and approved.

We repeat that it is proven that the election was held in strict conformity with these provisions, and that the governor came into the lawful possession of all the official returns of that election. At this point

the contest arose over the question as to who constituted the legal returning-board of the State—the one called the Lynch board, or the other, the Warmoth board. Pending that contest, the governor, on the 20th November, 1872, approved an act passed at the preceding session of the legislature of the State, repealing the act under which the two rival boards were contesting for the returns, and providing "that five persons, to be elected by the senate from all political parties, shall be the returning-officers," &c. On the same day he issued a proclamation calling a session of the legislature.

This last-named statute abolished the existing board, and therefore makes it unnecessary here to discuss which of the two was the legal one.

Under the authority vested in him by the constitution of Louisiana to fill vacancies during the vacation of the legislature, the governor proceeded to fill the board provided for by the act approved November 20, 1872, appointing De Feriet and others, known as the De Feriet board. On the 4th of December the governor submitted the official returns, (of which he had retained the custody.) That board, on the 4th of December, made the compilation and canvass, declaring McEnery and the candidates on the same ticket elected by 9,000 majority, and declaring, also, who had been elected members of the legislature; which result was proclaimed by the governor and certified to by the secretary of state, in pursuance of the election law of Louisiana.

In consequence of the seizure of the State capitol of Louisiana by a Federal marshal and United States soldiers, in obedience to an order of a Federal district judge, the members and senators returned by the De Feriet board met at the city hall, in New Orleans, and on the 9th day of December organized as a legislature, and was so recognized by the governor. On the 11th of December the senate elected a board of returning officers, known as the Foreman board. To this board the official returns were delivered by the secretary of the De Feriet board.* This board immediately proceeded to the canvass and compilation of these official returns, and made an official report of the result in due form, as required by law.† These compiled returns were submitted to the Senate Committee on Privileges and Elections during their investigation into the facts of the election now under consideration. The original returns were also before that committee, and unimpeached by the parties contesting the result, except a statement by John Ray, that in four parishes the names of the commissioners were forged, which fact, if it be a fact, was admitted not to have changed the result.

The official report referred to may be found on page 82 of Senate document No. 476.

We append the following copy of so much as gives the returns of the election of Congressman for the State at large:

* See Senate Report, No. 467, p. 76. † *Ibid.*, pp. 76, 77.

*Compiled returns of an election held in the State of Louisiana on the 4th day of November, A. D. 1872, pursuant to "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved March 16, 1870.*

| Parishes. | G. A. Sheridan. | P. B. S. Pinchback. | Scattering. |
|---|---|---|---|
| Ascension | 663 | 1,814 | ..... |
| Assumption | 1,815 | 1,377 | ..... |
| Avoyelles | 1,795 | 1,370 | ..... |
| East Baton Rouge | 1,339 | 848 | ..... |
| West Baton Rouge | 286 | 828 | ..... |
| Bienville | 945 | 423 | ..... |
| Bossier | 952 | 554 | ..... |
| Caddo | 1,802 | 1,509 | ..... |
| Calcasieu | 584 | 53 | ..... |
| Caldwell | 449 | 377 | ..... |
| Cameron | 176 | 33 | 1 |
| Carroll | 382 | 1,473 | ..... |
| Catahoula | 833 | 710 | ..... |
| Claiborne | 1,312 | 919 | ..... |
| Concordia | 164 | 1,625 | ..... |
| De Soto | 1,441 | 445 | ..... |
| East Feliciana | 673 | 1,661 | ..... |
| West Feliciana | 259 | 1,454 | ..... |
| Franklin | 539 | 253 | ..... |
| Grant | 513 | 401 | ..... |
| Iberia | (*) | (*) | (*) |
| Iberville | ..... | ..... | ..... |
| Jackson | 745 | 559 | ..... |
| Jefferson | 979 | 1,702 | ..... |
| La Fayette | 884 | 476 | ..... |
| La Fourche | 1,783 | 1,705 | ..... |
| Livingston | 543 | 149 | ..... |
| Madison | 740 | 1,315 | ..... |
| Morehouse | 682 | 646 | ..... |
| Natchitoches | 1,245 | 547 | ..... |
| Ouachita | 750 | 1,547 | ..... |
| Plaquemines | 464 | 1,033 | ..... |
| Point Coupee | 1,095 | 1,569 | ..... |
| Rapides | 1,960 | 1,163 | ..... |
| Red River | 362 | 211 | ..... |
| Richland | 706 | 282 | ..... |
| Sabine | 735 | 60 | ..... |
| Saint Bernard | 419 | 349 | ..... |
| Saint Charles | 110 | 382 | ..... |
| Saint Helena | 702 | 376 | ..... |
| Saint James | ..... | ..... | ..... |
| Saint John Baptist | 520 | 1,165 | ..... |
| Saint Landry | 2,808 | 1,365 | ..... |
| Saint Martin | (*) | (*) | (*) |
| Saint Mary | 1,073 | 1,491 | ..... |
| Saint Tammany | ..... | ..... | ..... |
| Tangipahoa | 779 | 598 | ..... |
| Tensas | 166 | 2,296 | ..... |
| Terre Bonne | ..... | ..... | ..... |
| Union | 1,365 | 470 | ..... |
| Vernon | 704 | 21 | ..... |
| Vermillion | 676 | 225 | ..... |
| Washington | 447 | 176 | ..... |
| Webster | 974 | 620 | ..... |
| Winn | 511 | 103 | ..... |
| Orleans— | | | |
| First ward | 1,764 | 636 | 12 |
| Second ward | 2,136 | 819 | ..... |
| Third ward | 3,031 | 1,583 | 1 |
| Fourth ward | 1,365 | 814 | ..... |
| Fifth ward | 1,981 | 1,318 | 1 |
| Sixth ward | 1,444 | 816 | ..... |
| Seventh ward | 1,575 | 1,590 | 1 |
| Eighth ward | 1,543 | 498 | ..... |
| Ninth ward | 2,038 | 539 | 1 |
| Tenth ward | 2,065 | 751 | 25 |
| Eleventh ward | 1,876 | 828 | ..... |
| Twelfth ward | 793 | 428 | ..... |
| Thirteenth ward | 521 | 438 | ..... |
| Fourteenth ward | 203 | 253 | ..... |
| Fifteenth ward | 791 | 952 | 1 |
| Total | 65,016 | 54,402 | 43 |

Majority for Sheridan, 10,614.

* Polls excluded.

RETURNS OF FORMAN BOARD.

We the undersigned returning officers, pursuant to authority vested in us by act No. 98, of 1872, approved November 29, 1872, do hereby certify that the foregoing is a true and correct compilation of the statements of votes cast at an election for State officers and Representatives to Congress held in the several parishes of the State of Louisiana, on the 4th day of November, 1872, as made by the supervisors of registration of said parishes; and we hereby declare that the following-named persons were duly and lawfully elected to the offices set against their names, respectively, to wit:

John McEnery, governor; D. B. Penn, lieutenant-governor; Samuel Armstead, secretary of state; H. N. Ogden, attorney-general; James Graham, auditor; R. M. Lusher, superintendent of public educat on; and George A. Sheridan, Congressman at large.

There being no returns from the parishes of Saint Tammany and Terre Bonne, and only meager and informal returns from the parishes of Iberville and Saint James, we do not take the responsibility to declare the result of the election in the same, but postpone action, to await the determination of the general assembly.

December 11, A. D. 1872.

ARCHIBALD MITCHELL.
B. R. FORMAN.
S. M. THOMAS.
O. F. HUNSAKER.
S. M. TODD.

We see no sufficient ground for rejecting this conclusion. The original returns are proved to have been received by the governor, proved to have been turned over, partially canvassed and compiled, by the De Feriet board, and proved to have been turned over from them, unaltered, to the Forman board, which completed the canvass and compilation, and proved and admitted to have been placed in the possession of the committee, and no intimation has ever been hazarded that the official statement, of which the above is a copy, is not correct.

The fact that in many of the parishes there was a larger vote for the fusion ticket than the number of white men registered, and a smaller vote for Pinchback than the number of black men registered, is cited as evidence of fraud in the election. Such an argument needs no serious refutation. It only shows what the evidence already discloses—that the black men were divided in this contest, many of them refusing to co-operate with the Kellogg party and voting for the Fusion ticket. It simply shows a change in the strength of parties. If evidence of fraud, then the recent elections in Connecticut, New Hampshire, and Ohio should be set aside on the same ground.

It has been urged that these returns leave out the vote of six parishes, to wit: Iberia, Iberville, Saint James, Saint Martin, Saint Tammany, Terre Bonne. There is no evidence whatever to impeach the correctness of this action of the board. On the contrary, the evidence adduced is of the most conclusive character that these votes were properly rejected. Stokes, the supervisor at Terre Bonne, testifies that, immediately upon entering upon the discharge of his duties, his office at the various places of registration was filled with crowds of drunken negroes; that he was subjected to insults and threats of personal violence, and his life in one case threatened, in order to force him to close his office. At another time his office was taken possession of by drunken negroes, incited by white men, and he compelled to suspend registration. On the day of the election the district attorney, in a state of intoxication, claiming to act as United States commissioner, arbitrarily closed the polls at one of the precincts. At 12 p. m., when the count showed, as far as it had proceeded, a majority for Fusion ticket, a crowd of five hundred negroes, provided with cans of coal-oil and bundles of hay, marched around the town, avowing the purpose to burn the town. His office was broken into and filled with these people, and he driven out of the parish, leaving seven boxes unopened. In the

parish of Iberville, a band of armed negroes held the town of Plaquemine for three days and nights; took the ballot-boxes by force from the commissioners; and amid scenes of disorder and threats of violence, the supervisor of registration, Thorpe, was made to perform the work of counting the votes alone, the crowd declaring that he must count or die; and if the result should vary from what they thought it ought to be, they would kill him. But even if the vote of these parishes as given by the Lynch board (whose count, in the unanimous opinion of the committee is worthless) be deducted from Sheridan's majority of 10,614, it still leaves him a majority of 7,451. The returns alleged to be forged by the other side, to which reference has been made, relate only to four parishes. If it is true that the returns referred to were forged, then, under the laws of Louisiana and in accordance with innumerable precedents of this House, they should be rejected, which would largely increase Sheridan's majority.

Even conceding that these returns should not be rejected, and accepting the canvass of the Lynch board (worthless as it is for all purposes of evidence), it still leaves Sheridan a majority 3,936 votes. It appears that a large number of affidavits, purporting to be sworn to by voters wrongfully denied registration or the right to vote, were counted by the Lynch board as votes for Pinchback. Many of these affidavits were known by the pretended board to be forgeries. A single witness, one Jacques, testified that he forged and delivered to this board while in session, 1,314 affidavits. To consider the question as to whether these affidavits should be counted either for or against a member of Congress, would be a needless waste of the time of this body; but even these affidavits deducted from Sheridan's vote still leave him elected by a large majority.

*Summary.*

| | | |
|---|---|---|
| Deducting the majorities claimed by the Lynch board in the six rejected parishes | 3,163 | |
| And in the four parishes where the returns are alleged to be forged | 3,515 | |
| Sheridan's majority is | | 3,936 |
| Deducting the majorities claimed by the Lynch board in the six rejected parishes | 3,163 | |
| And omitting those claimed to be forged, Sheridan's majority is | | 7,451 |
| Deducting the majorities claimed in the parishes where frauds were alleged | 3,515 | |
| Sheridan's majority is | | 7,099 |
| By the return of the Foreman board, Sheridan's majority is | | 10,614 |

The volume from which we have quoted was admitted and considered by the committee as evidence relating to the rights of the parties in this contest. It is a public document, containing a record of facts and testimony obtained in a proceeding ordered by the Senate, in which Mr. Pinchback was in effect a party, as his seat in the Senate depended upon the result. We consider it not only as admissible evidence, but abundantly sufficient to determine the rights of the parties to this contest.

As applicable to this question, we cite the following authorities:

Mr. Greenleaf, in his work on Evidence, vol. 1, sec. 491, speaking of the *admissibility and effect of public documents as instruments of evidence, says:*

To render such documents, when properly authenticated, admissible as evidence, their contents must be pertinent to the issue; it is also necessary that the document be made by the person whose duty it was to make it, and that the matter it contains be such as belonged to his province, or cases within his cognizance and observation. Documents having these requisites are in general admissible to prove, either *prima facie* or conclusively, the facts they recite.

"Public Statutes," "Public Proclamations," "Legislative Resolutions," "Journals of either House," "Diplomatic Correspondence," "Official Gazette," are mentioned by this author as documents admissible as evidence of the facts which they recite, even in courts of justice; but a broad distinction exists, as is well recognized by the writers upon public law, between the evidence admissible before judicial tribunals and that on which legislative bodies act.

The subject of judicial evidence has been treated by jurists with more or less fullness since jurisprudence became a science; but it has, perhaps, been elaborated in more detail, and has received a more systematic form in England than in any other country. This has been owing to peculiarities in the procedure of our courts of common law, which need not be here noticed. With respect to our present subject, the most important rule of evidence in the law of England is that which prescribes the exclusion of *hearsay evidence;* that is to say, of statements of fact made by the witness, not from his own observation, but from the observation of others.

* * * * * * *

In judicial proceedings, therefore, where the facts are determined, not by official agents of the government, but by the testimony of witnesses taken casually from the midst of the community, the general principle is recognized by our law that the witness must speak to an event which occurred under his notice, and within the reach of his senses.

* * * * * * *

The process of ascertaining facts for legislative purposes is not, in general, so formal, or subject to such strict rules of evidence as the procedure of executive departments, whether administrative or judicial. Petitions, complaints, remonstrances, statements of grievances, are presented to a legislature, or, if it consists of a deliberative body, individual members of that body may represent facts upon their own authority. It may then either proceed at once to legislate upon the faith of such suggestions, or it may take them as raising merely a presumption, and may institute an inquiry of its own. It may call for papers, accounts, correspondence, and other documents. It may likewise, by proper means, examine witnesses, and thus ascertain, by original testimony, the facts bearing upon the subject under consideration.—*Lewis's Methods and Reasonings in Politics.*

In view of the above considerations, we recommend the adoption of the following resolutions:

*Resolved*, That P. B. S. Pinchback was not elected as a member of the Forty-third Congress from the State of Louisiana at large.

*Resolved*, That George A. Sheridan was duly elected as a member of the Forty-third Congress from the State of Louisiana at large, and is entitled to a seat in this House as such member.

L. Q. C. LAMAR.
EDWARD CROSSLAND.
J. MILTON SPEER.

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## GUNTER vs. WILSHIRE.—THIRD CONGRESSIONAL DISTRICT OF ARKANSAS.

Omissions, irregularities, and informalities in counting the vote.

Returns canvassed by the secretary of state in the presence of governor, but no proclamation of the result made, nor any certificate of election issued to either person as required by the statutes of the State.

Ballots cast for either candidate upon which the names were misspelled were counted in correcting the canvass.

Committee reported in favor of the contestant and the House adopted the report, June 16 1874.

T. M. Gunter sworn in June 16, 1874.

Authorities referred to: Statutes of Arkansas, pages 316, 317, 318, 319, 321, 323-322 State Constitution, art. 8, sec. 5; Enforcement Law of Congress, May 31, 1870.

June 3, 1874—Mr. J. W. Robinson, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the contested-election case of Thomas M. Gunter against W. W. Wilshire, from the third Congressional district of Arkansas, submitted the following report:*

The case was submitted on the merits, and required the examination of a large volume of evidence, and the decision of many questions of law and fact.

The contestee claims that the contest should be dismissed because the notice of contest was not served on him within thirty days from the day fixed by law for canvassing the returns and determining the result of the election.

The returns were first canvassed by the secretary of state, in the presence of Governor Hadley, on the 14th of December, 1872, but no proclamation of the result was made, nor any certificate of election issued to any one, both of which the statute of the State required the governor to do immediately. (See sec. 50.) Afterward Elisha Baxter, being inaugurated governor, having, on the 18th day of February, 1873, caused the votes to be again canvassed by the secretary of state in his presence, made proclamation of the result, and issued his certificate as follows, viz:

*Abstract of the returns of the election held in the third Congressional district of the State of Arkansas, on the 5th day of November, A. D. 1872, for Representative in Congress.*

| Counties composing the third Congressional district. | Votes polled for W. W. Wilshire. | Votes polled for Thos. M. Gunter. | Votes polled for Wilshire. | Votes polled for Gunther. |
|---|---|---|---|---|
| Benton | 255 | 1,189 | ..... | ..... |
| Boone* | 188 | 746 | ..... | ..... |
| Carroll | 272 | 330 | ..... | ..... |
| Crawford | 932 | 590 | ..... | ..... |
| Clark | 1,317 | 806 | ..... | ..... |
| Franklin | 529 | 259 | ..... | ..... |
| Johnson | 119 | 75 | ..... | ..... |
| Little River | 505 | 276 | ..... | ..... |
| Madison | 434 | 557 | ..... | ..... |
| Marion | 140 | 684 | ..... | ..... |
| Montgomery† | 177 | ..... | ..... | 407 |
| Newton† | 278 | ..... | ..... | 184 |
| Pulaski‡ | 3,160 | 1,621 | 12 | ..... |
| Perry | 168 | 81 | ..... | ..... |
| Pope | 521 | 310 | ..... | ..... |
| Pike | 226 | 125 | ..... | ..... |
| Polk | 102 | 342 | ..... | ..... |
| Sebastian | 1,017 | 578 | ..... | ..... |
| Sevier | 264 | 425 | ..... | ..... |
| Washington§ | 702 | 1,218 | ..... | ..... |
| Yell | 536 | 1,011 | ..... | ..... |
| Sarber‖ | 784 | 276 | ..... | ..... |
| Total | 12,644 | 11,499 | 12 | 591 |

* Boone County has not been made a part of the third Congressional district by any act of the legislature.

† The votes given to "Gunther" from Montgomery and Newton Counties were probably intended for Thomas M. Gunter.

‡ The scattering vote in Pulaski County given to "Wilshire," "Guntee," "S. M. Gunter," "T. M. Guntee," "Thos. M. Guntee," "T. Ros Gunter," and "Thos. M. Crenter," is a literal copy of the clerk's return.

§ A certificate of the clerk is appended to the returns from Washington County questioning the validity of the election in Richland Township. If this objection is allowed the vote will stand: For Wilshire, 666, and Gunter, 1,125.

‖ Sarber County has not been made a part of the third Congressional district by any act of the legislature.

Scattering votes polled for Guntee, S. M. Gunter, T. M. Guntee, Thos. M. Guntee, T. Ros Gunter, and Thos. M. Crenter in Pulaski County, 1,456. There are no returns from the clerk of Scott County.

STATE OF ARKANSAS, EXECUTIVE OFFICE:

Whereas the acting governor failed to issue a certificate of election to the person who received the highest number of votes for Representative in Congress from the third Congressional district of Arkansas, at the election held in said district on the 5th day of November, A. D. 1872; and whereas on the 14th day of February, A. D. 1873, the secretary of state, in my presence, did cast up the votes polled for said Representative at said election from the returns on file in his office: Now, therefore, I, Elisha Baxter, governor of the State of Arkansas, do certify that the foregoing statement, with the explanatory notes, is a full, true, and correct exhibit of the votes polled for Representative from the third Congressional district of Arkansas at the election held in said district on the 5th day of November, A. D 1872, as appears from the returns of said election on file and certificate of clerks deposited in the office of secretary of state.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at Little Rock, on this 18th day of February, A. D. 1873.

[SEAL.] ELISHA BAXTER,
*Governor.*

By the governor:

J. M. JOHNSON,
*Secretary of State.*

This proclamation and certificate constitute the only announcement of the determination of the result of the election in that district, and the committee are of the opinion that, in view of all the circumstances, the service of notice of contest on the 13th of March is sufficient, and overruled the motion to dismiss the contest.

STATUTES AFFECTING THE CONTEST.

The following are the leading features of the statutes of Arkansas affecting this case:

The election precincts are formed by the county courts, and the places of voting are fixed by the court.

The judges of election, three in number, to be electors, are appointed by the county board of registrars, and they to appoint two clerks of like qualifications. (3d section election law, p. 316.)

Voters assembled appointed judges of election when none appointed or those appointed fail to act. (Sec. 7, p. 316.)

The following are the leading features of the statutes of Arkansas, so far as they affect the contest.

The election precincts are formed by county courts, and also the places of voting fixed by the court. (3d section election law, p. 316.)

Judges and clerks, before acting, must, before a person authorized to administer oaths, take a prescribed oath that they are not *disfranchised*, &c. (*Ib.*, sections 10, 11, p. 317.) And if no one present authorized to administer oaths, judges may to each other and the clerks. (*Ib.*, section 12.)

County clerk twenty-five days before general election to deliver blank poll-books and registration-books to sheriff, and sheriff forthwith to deliver these to judges of respective precincts. (*Ib.*, p. 318, section 16.)

Judges to open polls at 8 a. m., and close at sunset. (*Ib.*, p. 318, 319, section 17.)

Clerks to register names of voters in the order of their voting. (*Ib.*, 321, section 29.)

All who present certificates of registration, and whose names are on registration-books, entitled to vote, and not debarred by any challenge when so appearing registered (*Ib.*, 321, section 30), and registration-certificate canceled upon voting. (*Ib.*, 321, section 31.)

Clerks to enter on poll-book, under the names of persons voted for, the number of votes given for each, and also the number of votes given for each person and the office for which the votes were given; which the clerks shall attest. (*Ib.*, p. 321, section 32.)

*The judges shall certify, under their hands, the number of votes given to each person, and the offices for which such votes were given, which shall be attested by the clerks.* (*Ib.*, p. 221, section 33.)

SEC. 34. After canvassing the votes as aforesaid, the judges, before they shall disperse, shall put under cover one of the poll-books, seal the same, and direct it to the clerk of the county of their respective counties.

SEC. 35. And the poll-books thus sealed and directed shall be conveyed by one of the judges, to be determined by lot, if they cannot otherwise agree, to the clerk of the county court within *three* days after the closing of the polls.

SEC. 37. If any judge of election in any election district, whose duty it may be, shall fail to deliver to the clerk of the county court the *return* poll-books of said election within three days, as provided by law, on the fourth day the clerk of said court shall dispatch a messenger to bring up the same, in which case the poll-books shall not be compared until the *seventh* day; and all expense incurred by sending the messenger shall be paid by the defaulting judge of election.

Judges after close of election to securely envelop all ballots received, under seal, and to return them to county court clerk, which shall in no event be opened, except in case of contested election. (*Ib.*, p. 322, section 39.)

SEC. 39. On the fifth day after the election (except in cases provided for in section thirty-seven), or sooner if all the returns have been received, the clerk of the county court shall proceed to open and compare all the several election returns *which have been made to his office*, and make abstract of the votes given for the several candidates for such office on separate sheets of paper. Such abstracts, being signed by the clerk, shall be deposited in the office of the clerk of the county court, there to remain.

Informalities in certificates of judges and clerks not cause for rejection of returns. (*Ib.*, p. 322, section 40.)

County clerk, within two days from the comparison of returns, to deposit, in nearest post-office, certified copies of the abstract named in section 39, for "legislative officers," &c., directed to the secretary of state. (*Ib.*, 323, section 42.)

SEC. 50. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of elections to the clerks of the county courts, or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as have made returns, for such persons voted for as members of Congress; and the governor shall immediately thereafter issue his proclamation declaring the person having the highest number of votes to be duly elected to represent the State in the House of Representatives of the Congress of the United States, and shall grant a certificate thereupon under the seal of the State to the person so elected.

Article 8, section 3, of the constitution contains the following provision:

The following classes shall not be permitted to register, or vote, or hold office, viz:

First. Those who, during the rebellion, took the oath of allegiance, or gave bonds for loyalty and good behavior to the United States Government, and afterward gave aid, comfort, or countenance to those engaged in armed hostility to the Government of the United States, either by becoming a soldier in the rebel army, or by entering the lines of said army, or adhering, in any way, to the cause of rebellion, or by accompanying any armed force belonging to the rebel army, or by furnishing supplies of any kind to the same.

Second. Those who are disqualified as electors, or from holding office in the State or States from which they came.

Third. Those who during the late rebellion violated the rules of civilized warfare.

Fourth. Those who may be disqualified by the proposed amendment to the Constitution of the United States, known as Article XIV, and those who have been disqualified from registering to vote for delegates to the convention to frame a constitution for the State of Arkansas, under the act of Congress entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867, and the acts supplementary thereto.

Fifth. Those who have been convicted of treason, embezzlement of public funds, malfeasance in office, crimes punishable by law with imprisonment in the penitentiary, or bribery.

Sixth. Those who are idiots or insane: *Provided*, That all persons included in the first, section, third, and fourth subdivisions of this section, who have openly advocated or who have voted for the reconstruction proposed by Congress, and accept the equality of all men before the law, shall be deemed qualified electors under this Constitution.

Section 5 of the same article of the constitution provides as follows:

All persons before registering or voting, must take and subscribe the following oath.

Then follows the form of the oath, swearing to support the Federal and State constitutions; that affiant is not disqualified from registering or voting by any of the first, second, third, or fourth subdivisions of the eighth article of the constitution; that affiant would never countenance secession; would accept the political equality of all men; would not attempt to deprive any person, on account of race, or any political or civil right enjoyed by other persons; would not injure any one or countenance such injury for past or present support of the Government of the United States, or the laws thereof, or of the principle of equality of all men, and subjects to the penalty of perjury the taking of this oath falsely.

REGISTRATION.

The registration act of 15th July, 1868, is found in the acts of that year, from pages 52 to 60 inclusive. It provides for the appointment, by the governor, with the consent of the senate, of a board of registration for each county, composed of three loyal, competent, and discreet citizens; requires the president of the board to take the above-named oath of franchise, to give notice of time and place of registration; provides that the governor shall cause certificates and books of registration to be deposited with county clerks, and the county clerks to furnish them to the president of said board; that the president of the board, at prescribed times, shall attend at each voting-place for purposes of registration.

The eighth section *prohibits any person being registered unless he take and subscribe said oath of franchise.* (Article 8, section 5, of the constitution.)

The ninth section provides for the registrar making diligent inquiry, and taking testimony, to ascertain the right of registration.

The eleventh section re-enacts the prohibitions of the constitution against registering disloyal persons.

Section twelve *convenes the board at the court-house during the six secular days next preceding each general election as a board of review, and requires them, on examination and evidence, to admit to registration persons entitled, and who could not be registered at their precincts; and also to strike from registration the name of any person found, on review, to be disfranchised by the constitution.*

Section thirteen requires the board to deliver to the county clerk a copy, and to a judge of election of each precinct a copy of the *revised* registration-books of each precinct, the list of voters therein alphabetically arranged.

Section twenty-three requires the governor, *when notified that a proper registration has not been made in any county, to cause a new registration to be made;* the same to be governed as other regular registrations.

ENFORCEMENT LAW OF CONGRESS.

AN ACT to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes. (Approved May 31, 1870.)

SEC. 3. *And be it further enacted,* That whenever, by or under the authority of the constitution or laws of any State, or the laws of any Territory, any act is or shall be required to be done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performace, or offer to perform, or acting

therein, be deemed and held as a performance in law of such act; and the person so offering, and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act: and any judge, inspector, or other officer of election, whose duty it is or shall be to receive, count certify, register, report, or give effect to the vote of any such citizen who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of a citizen. upon the presentation by him of his affidavit, stating such offer, and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall for every such offense forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case. with full costs, and such allowance for counsel-fees as the court shall deem just; and shall also for every such offense be guilty of a misdemeanor, and shall on conviction thereof be fined not less than five hundred dollars, or be imprisoned not less than one month, and not more than one year, or both, at the discretion of the court.

The "scattering" votes referred to in the certificate of Governor Baxter, canvassed for "Guntee," "T. M. Guntee," "T. M. Gunter," "T. Ross Gunter," "S. M. Gunter," "Thomas M. Crenter," and "Thomas N. Gunter," were all from the county of Pulaski, as appears from the evidence of Frank Strong (page 793), and of the abstract of that county, as follows (page 801), viz:

*Abstract of returns of an election held in Pulaski County, Arkansas, on Tuesday, the 5th day of November, A. D. 1872.*

CONGRESS, THIRD DISTRICT.

| Precincts. | W. W. Wilshire. | Thos. M. Gunter. | S. M. Gunter. | Thomas M. Guntee. | Wilshire. | Guntee. | T. M. Gunter. | Thos. M. Gunitre. | Thos. N. Gunter. | T. Ros Gunter. | Thomas M. Crenter. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashley | 324 | | | | | | 277 | | | | |
| Bayou Meto | 1 | | | | | | 76 | | | | |
| Big Rock | 294 | 253 | | | | | | | | | |
| Badgett | 106 | 41 | | | | | | | | | |
| Clear Lake | 49 | 29 | | | | | | | | | |
| Cypress | | | | | | | | 50 | | | |
| Campbell | 318 | | | | | | | | 33 | | |
| Caroline | 31 | | | | | | | | | 506 | |
| Eastman | 494 | 16 | | | | | | | | | |
| Eagle | 109 | 52 | | | | | | | | | |
| Fourche | 68 | 83 | | | | | | | | | |
| Gray | 75 | | | | | | | | | | |
| Maumelle | 4 | | | 56 | | | | | | | |
| Mineral | 3 | | | | | | | | | | 32 |
| Owen | 27 | 86 | | | | | | | | | |
| Prairie | | | | | 12 | 138 | | | | | |
| Plant | 12 | 57 | | | | | | | | | |
| Peyatt | 55 | 88 | | | | | | | | | |
| Richwood | 36 | 35 | | | | | | | | | |
| Union | 31 | 46 | | | | | | | | | |
| 1st ward, city of Little Rock | 295 | | | 287 | | | | | | | |
| 2d ward, city of Little Rock | 187 | 178 | | | | | | | | | |
| 3d ward, city of Little Rock | 421 | 443 | | | | | | | | | |
| 4th ward, city of Little Rock | 220 | 214 | 1 | | | | | | | | |
| Total | 3,160 | 1,621 | 1 | 343 | 12 | 138 | 353 | 50 | 33 | 506 | 32 |

STATE OF ARKANSAS.
*County of Pulaski:*

I, George W. McDiarmid, clerk of the county court, do hereby certify that the foregoing is a correct copy of the abstract of returns as the same appears on file in my office.

Witness my hand and official seal this 19th day of November, A. D. 1872.

[SEAL.] G. W. McDIARMID.
*Clerk of the County Court.*

By some strange mishap the original returns of the precincts where these scattering votes were cast have been lost or destroyed.

The testimony submitted satisfies the committee that the contestee and the contestant were the only candidates for Congress in that district; that 1,433 of the "scattering" votes referred to in the governor's certificate as being given for "Guntee," "T. M. Guntee," "Thomas M. Guntee," and "T. Ross Gunter," were, in fact, given for Thomas M. Gunter, and should be counted for him; and that one vote, referred to as given for "S. M. Guntee," and the 32 given for "Thomas M. Crenter," about which no evidence was offered, are not proven to have been cast for Thomas M. Gunter. The testimony on this point is voluminous, but entirely satisfactory, and the 1,433 votes are added by the committee to the credit of contestant Thomas M. Gunter. So, also, the 407 votes in Montgomery County, and the 184 votes in Newton County, returned for "Gunther," were cast for Thomas M. Gunter; also, the 12 votes in Pulaski County, returned for "Wilshire," were cast for the contestee, and should be credited to them respectively.

Correcting the canvass of the returns as above indicated, the committee find the whole vote returned, and to be counted for contestant, Thomas M. Gunter, to be 13,513, and for the contestee 12,656, giving the contestant a majority of 857 votes.

In the foregoing schedule no votes are canvassed from Scott County, and but 194 from Johnson County. In both of these counties returns were made which, if counted, would increase the majority of the contestant 1,003.

In Scott County the books of registration were stolen from the clerk's office a few days before the election, and in Johnson County the registration was never completed, and but a small vote was polled in either county on that account. Objections are made to very many of the returns of the different precincts of the district by both the contestant and contestee for irregularities, omissions, and informalities, and much conflicting and unsatisfactory testimony has been submitted in regard to the many questions of fact raised in the notice and answer; all of which the committee have carefully examined, and are satisfied that, after correcting the returns wherever the testimony requires the same to be done, and making allowance for losses and gains on both sides, the majority of the contestant, as before shown, is not diminished, but rather increased.

The committee have not deemed it necessary to state more fully their conclusions in regard to each and all of the points raised in the contest, there being no division in the committee in regard to the result.

The committee, therefore, recommend the adoption of the following resolutions:

First. *Resolved*, That W. W. Wilshire was not elected and is not entitled to a seat as Representative in the Forty-third Congress from the the third district of the State of Arkansas.

Second. That Thomas M. Gunter was elected and is entitled to a seat as Representative in the Forty-third Congress from the third district of Arkansas.

## BRADLEY vs. HYNES.—CONGRESSIONAL DISTRICT OF ARKANSAS.

Charges of fraud and improper practices—the manipulation of returns, altering and suppression of votes, and the corrupt use of money.

The testimony failed to sustain the charges preferred, and the committee asked to be discharged from the further consideration of the case.

The House adopted the report June 16, 1874.

June 16, 1874.—Mr. Pike, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the memorial of John M. Bradley, preferring charges against Hon. William J. Hynes, a member of this House from Arkansas, report:*

The memorialist sets forth, under oath, that he was one of the candidates for Congressman at large for the said State, and was duly elected at the election held on the 5th day of November, 1872; that Hon. William J. Hynes, of that State, and now a member of this House, was also a candidate for the same office; that the county clerk for the county of Pulaski, in said State, whose duty it was to make a true return of the votes cast in said county to the secretary of state, did corruptly, and in collusion with the said Hon. William J. Hynes, suppress and falsely return the number of four hundred and ninety votes which had been lawfully cast for the said John M. Bradley, by returning the said votes in the name of John M. Bradlix, John M. Bradshaw, John W. Bradley, John M. Bradby, and John M. Braddy; that, in consequence of said and other corrupt returns, the said Hynes claimed to have been elected, and received the certificate of the governor, upon which he claimed and now holds his seat; that after the certificate was given the said Hon. William J. Hynes, the memorialist duly served on him a notice of contest, and thereupon took depositions on due notice, showing a majority of the votes cast at the said election for Congressman at large to have been cast for him; that the above four hundred and ninety votes should have been returned for him; that after the taking of said testimony the said Hon. William J. Hynes proposed to pay him $1,500 to abandon the contest and deliver to him the depositions he had taken—$500 to be paid down, $500 when he took his seat, and the balance when he drew his mileage; that he accepted the proposal, and gave up the depositions he had previously taken, and that said Hynes thereupon paid him $500.

Mr. Hynes, the member of the House charged, appeared before the committee, and made, under oath, a statement relating to the charges against him contained in said memorial. His statement accompanies this report.

He also produced the depositions taken by the memorialist, which had been given up to him.

The committee do not find, upon examination of the said depositions, and the exhibits attached to them, any evidence or proof, not even an intimation, that Mr. Hynes had been guilty of any fraud or improper practice connected with the election nor that he had any connection with or knowledge of the alleged fraudulent certificates of returns of the clerk of Pulaski County, in the return of votes as given for different persons, which had in fact been given for the memorialist. The

depositions do not, in fact, show that any such fraud had been committed. They do show great carelessness and irregularity in the custody of election returns.

Neither do the depositions show that the memorialist was elected, as he sates, but, on the contrary, tend most strongly to show that Mr. Hynes was elected by a much larger majority than that upon which the governor gave him the certificate of election.

Mr. Hynes, in his statement before the committee, and which accompanies this report, says that his actual legal majority, in his belief, was many thousands greater than that counted for him by the governor; that had it not been for numerous frauds against him, practiced in many of the counties of the State, by raising returns for Bradley and suppressing returns for him, and which he details in full, his majority, in his belief, would have been full fifteen thousand.

His certificate of election was given him December 14, 1872, and the notice of contest was not made until the 28th of January after, and many days out of time.

So, too, the depositions which Bradley had taken were commenced several days after his time had expired and with a total disregard of the statute in nearly every other particular. All of which would seem to indicate that he had something in view other than a serious contest for a seat in Congress.

Upon the charge that the memorialist was induced, by the payment and promise of money, to abandon the contest, Mr. Hynes in his statement says:

His statement that I ever approached him or made any proposition to him of any kind about stopping his contest, and all the conversation which he swears to as having passed between us on that subject, is pure fiction.

About three days after the closing of the depositions, Bradley came to my room at the Metropolitan Hotel in the morning before I was out of bed, and there said to me that Governor Baxter was going to give him an appointment; that he had not yet sent off the evidence taken, and if I would just pay the expenses of the "suit," as he called it, which he had been to, he would not put me to any more trouble. I asked him what the expenses were. He said he had been involved in over a thousand dollars expense in fees, &c., but he would let a thousand dollars cover it. I told him I had not the money and could not raise it. He then said I could raise him five hundred dollars to meet his immediate expenses, and he would wait for the other five hundred until I could spare it. I told him I would think about it and see. After he had gone, I reflected that it did not in any manner affect my election; that that was over and universally conceded, even by Bradley; that it was only the more firmly established by the evidence which had been taken, and that his proposition involved nothing but a question of personal convenience, which I had a right to decide for myself. I remembered that the filing of any paper purporting to be in contest of my seat would suspend the payment of my salary until the 1st of December, and my obligations were out then for nearly two thousand dollars based upon my expectation to be able to pay them from my salary. My wife was lying seriously ill here at Washington, and I was painfully anxious to come on. These considerations, as well as the great expense of a contest, decided me to suffer him to bleed me that much, affecting, as it did, nothing but my own domestic and financial convenience, and affecting no right but my own individual right to the money which he insisted upon having, as the price of my peace from his unwarranted and dishonest annoyance; that I had no fears for the result of a contest, or that it could affect my seat in Congress in any manner, to my discomfort, the facts which I have presented, showing my immense majority, and the evidence taken by Bradley himself, showing my election more strongly than before, all abundantly show. I knew, Bradley knew, and every man in Arkansas knew, that I was elected by the largest vote ever polled for any candidate on any ticket in my State.

While the committee regard this agreement as an act on the part of Mr. Hynes which they cannot approve, they do not find that it was made for the purpose of securing his seat in Congress corruptly, nor that he had any cause to fear the result of the contest.

The committee cannot but regard the conduct of the memorialist as dishonorable and mercenary. If he believed he had any merit in his

case, he betrayed the rights of those who gave him their suffrages. If he did not believe his contest was meritorious, his demand for money was most dishonorable.

The committee have instructed me to report the accompanying resolution:

*Resolved*, That the Committee on Elections be discharged from further consideration of the case of John M. Bradley against William J. Hynes, a member of this House from the State of Arkansas.

AUSTIN F. PIKE,
*for the Committee.*

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*Statement of Wm. J. Hynes in reply to that of John M. Bradley, before the Committee on Elections of the House of Representatives, United States.*

I will state to the committee the facts relating to my election and right to a seat in the Forty-third Congress as briefly as I can and be complete, and also whatever is necessary in answer to the allegations of John M. Bradley, whether material to the question of my right to the seat or not, but which seek to asperse my integrity, if the committee will indulge me.

John M. Bradley was the candidate for Congressman at large on what was locally known as the "Minstrel Republican" or "State-House" ticket, headed by Mr. Baxter for governor. I was the candidate upon what was designated the "Reform Republican" ticket, headed by Mr. Brooks for governor. That the Brooks ticket was elected I have never heard nor seen denied by any class in Arkansas, and Mr. Bradley is the first man who has had the hardihood to deny it under oath. That I polled the largest vote cast for any one on that ticket and Mr. Bradley the smallest vote cast for any candidate upon his ticket is universally known in the State, and is a matter of public record, my majority over Bradley exceeding the majority of Brooks over Baxter more than three thousand votes, and my legitimate majority over Bradley being over fifteen thousand votes.

The manner in which this large majority was concealed by fraud and conspiracy until by my own detection I rescued enough of it to save me even on the count of the fraudulent conspiracy against me, I shall proceed to state.

This committee are already sufficiently familiar with the law and facts of the election in Arkansas in 1872 to know that every point of the machinery of election from the registrar's clerks and judges of election all the way up to the secretary of state and governor was in the hands of my political opponents in that race, and used in the interest of Mr. Bradley and the ticket on which he ran.

In a fraudulent conspiracy entered into by these officers having the returning and canvassing of the votes the following returns were illegally and fraudulently withheld from the count:

The whole returns from Green County, giving me 726 majority; from Johnson County, giving me 501 majority; from Scott County, giving me 453 majority, and from Poinsett County, giving me 146 majority. In Conway County only one township was counted, being the only township in the county where the acting clerk and returning officer had received a majority of votes for the office of clerk for which he was a candidate at that election—he, the clerk, fraudulently omitting to return the other twelve townships in the county, which twelve townships gave me an additional majority of 320 votes. Of this county I have personal knowledge that the full returns were first made. I saw a certified copy of them under the seal of the clerk, with all the thirteen townships included in the returns. And the deputy clerk who took the official returns to Little Rock told me just as he arrived at the hotel what my majority was in that county, which he informed me was 444. In Van Buren County eleven precincts were in the same way fraudulently omitted from the returns, which gave me 319 majority; in Monroe County two townships, which gave me 191 majority; in Independence County, 63 majority; in Perry County, 161 majority; in Pope County, 146 majority; in Pike County, 29 majority; in Sevier County, 202 majority; in Hempstead County, 386 majority; in Clark County, 211 majority, and in Mississippi County, 250 majority, were thus withheld, making a total of 4,104 which were illegally and fraudulently withheld from my majority, which votes were legally cast and returned for me by the judges of election, and in most cases were in the first place returned by the clerks to the seat of government but sent back to be cut down to the requirements of the Bradley-Baxter ticket.

But the fraudulent and unlawful suppression and omission of these votes and returns from the canvass was not sufficient to defeat me, so another plan of raising the returns on the Bradley-Baxter side was resorted to. In Clark County, not satisfied with suppressing returns from three precincts, which gave me a majority of 211, they also raised the returns from Missouri Township 400, even, for Bradley and his ticket—although there were only 72 registered voters in the township, and only 68 had actually voted—returning from that precinct 447 votes for Bradley and 21 for me. The returns from Missouri Township were held

back, for the purpose of this fraud, until all the rest of the county had been heard from. All of which is proven in the Brooks *vs.* Baxter case by the judges of election, who swear that the returns were changed after they left their hands.

In Sarber County the returns for Bradley and his whole ticket were raised 758 votes. In this county Bradley is given a majority of 508, when the facts are that the returns made by the judges of election and reported to us by the United States supervisors, gave me a majority of 250. The clerk instead of making his returns therefrom to the secretary of state took the seal to Little Rock, and there, after the necessities of the case were developed, in conspiracy with the canvassing officers manufactured fraudulent returns not based at all upon the election in Sarber County, but wholly upon the requirements of the Bradley-Baxter ticket.

In Chicot County the returns were raised for Bradley and his ticket 500 votes. They were returned to Chicot from Little Rock, after they had been sent up by the clerk with instructions to so raise them, and they were changed accordingly.

In Lafayette County the returns were fraudulently raised 800 votes for Bradley and his ticket.

In Union County the returns were fraudulently raised 500 for Bradley and his ticket.

In Crittenden County, Bradley's majority was fraudulently raised 1,000 votes.

In Phillips County, Bradley's majority was fraudulently raised by various modes, 1,500 votes.

In Pulaski County upward of 1,500 fraudulent certificates of registration were issued in the interest of Bradley and his ticket, and voted by repeaters and non-residents. In Eastman Township, in said county, 64 legal ballots, which were cast for me, were taken out of the ballot-box, and 64 ballots for Bradley were fraudulently put in their place, and after the polls were closed, 47 names were fraudulently added to the poll-book to make the number of names correspond with the number of ballots which had been stuffed; and all this in the presence of the United States supervisor, who protested against the unblushing fraud. In Gray Township, in the same county, 58 ballots, which had been lawfully cast for me, were taken out of the ballot-box, and 58 ballots for Bradley fraudulently put in their place.

In Crawford County 100 ballots for Bradley were placed in the ballot-box at Richmond precinct before the polls were opened, and were fraudulently counted for him in the returns. At Van Buren precinct, in the same county, the ballot-box was corruptly changed at noon, and the lawful box, where 350 ballots had been cast for me, substituted by a fraudulent box containing 350 for Bradley in their place, making a difference of 800 votes in that county fraudulently in Bradley's favor. I might inform the committee that the box which was thus taken away, having the people's votes in it, has since been found, shoved away in the cupola of the court-house where the polls were held, with the ballots, as I have stated, in it.

Here is a total of this class of frauds, chiefly by raising the returns for Bradley, of 8,053, which, added to the 4,104, the total of the majorities fraudulently withheld from the canvass, makes a total of 12,157 additional majority of which I was cheated mostly in the coun alone.

In addition to this class of frauds perpetrated in the interest of Bradley and his ticket, there was another class first resorted to, and which was expected to be enough of themselves to secure the success of the Bradley or Baxter ticket. I refer to the wholesale, arbitrary, illegal, and secret striking from the books of registration of many thousands of names of voters who would have voted our ticket, so that when they appeared at the polls on election day and presented their ballots, with their certificates of registration, they were informed by the judges of election that they could not vote, as their names were not on the registration books. The number thus illegally stricken off throughout the State I cannot give, but my data from seventeen counties alone foot up 7,597. This fraud we were more or less prepared for, and took steps to hold separate polls where this class of electors could vote. First offering to vote at the regular polls, they cast their ballots, accompanied with affidavits, setting forth that they had been registered, were legal electors, and were illegally denied the right to vote, and would have voted the tickets attached to their affidavits if they had been permitted to vote. They cast their ballots, with affidavits attached, at these side-polls, as they were called, where they were received by judges of election elected by the voters and sworn as other judges. I have the data from only fifteen counties of the returns from the side-polls, and cannot tell what their entire vote was throughout the State; but from those fifteen counties my majority at these side-polls was 3,710, making a total majority for me of 15,867 legal votes, cast at the election of Congressman at large in the State of Arkansas on the 5th of November, 1872. And bear in mind, this does not cover the whole case. I am satisfied that full data from all the counties of the facts of the election would increase my legitimate majority several thousand more.

These facts were generally known to all who took pains to be informed of the result of the election. They were published in the newspapers, and must have been within the information of my competitor. Yet I did not know how far they proposed by this conspiracy to carry these frauds until after the canvass. Determined, however, to lose no time in ascertaining the facts, that I may omit no step necessary to defeat any attempt which may be contemplated to defraud me of my seat in Congress and the people of a Representative whom they had elected by a large majority, for it was generally feared that our whole ticket would

be slaughtered in the count, my first step was to ascertain the result of the canvass. I accordingly proceeded to the office of the secretary of state on the 12th of December, 1872, and asked him the result of the canvass in the case of Congressman at large. He informed me that Bradley had a majority of about seven hundred votes. I asked to see the official abstract upon which the count was made. He asked me what I wanted to see it for when he had told me the result. I answered that I wished to see the exact figures, as I had returns which showed me elected by a large majority, and I would prove it to the discomfort of whoever had defrauded me, and I wished to see where the discrepancies were between his returns and mine. He then showed me the abstract, and the footings at the bottom of the columns for Bradley and myself were John M. Bradley 39,687, and Wm. J. Hynes 38,933. I sat down and added up the columns myself carefully twice, and found that their arithmeticians had made a mistake of just one thousand in adding my column, and that my footing should have been 39,933, instead of 38,933. The mistake in adding, I believe, was an honest one, because it was a very natural one. It arose from the fact that I had run ahead of my ticket in nearly every county in the State, and the excess was generally somewhere between ten and one hundred, so that my column of tens was greatly swelled beyond the other columns on the abstract, containing as it did the whole State ticket, and Congressman at large. My column was the last on the abstract, and by the time they got to it they had become so used to carrying twenty-odd over to the column of hundreds, as was right in all the other cases, that they carried twenty-odd in mine when it should have been thirty-odd, and the difference of ten in carrying to hundreds made a difference of one thousand in the footings. Yet even though this mathematical mistake was honest, I noticed on the abstract before me that the county of Prairie, which gave me a majority of 541 votes, was entered thereon in lead-pencil, and I did not know but that it might have been so entered for convenient rubbing out if the totals had shown it to have been necessary. This apprehension was increased by observing on the same abstract that the returns from the county of Scott, which had given me a majority of 453 votes, had been entered thereon and then crossed out with a red line, and the words written opposite, "no returns received." It was generally understood that they feared a contest before Congress for the State at large, knowing how thoroughly it would show the failure of their whole ticket; yet I decided not to call their attention to the mistake until I had a copy of the abstract. I asked the clerk for a blank and proceeded to make a copy of the abstract covering the columns for Congressman at large, omitting the footings, and carefully drew up a certificate stating that it was a full and true copy of the votes of the several counties on the official abstract as canvassed for Congressman at large, &c. The figures on my copy were carefully compared with those of the original by Deputy Secretary of State Strong, and afterward duly signed and sealed by Secretary of State Johnson as a true and correct copy of the official abstract. After I had the copy I called the attention of Secretary Johnson to the fact that there was a discrepancy of one thousand between the figures in the column and the footing. He treated the statement at first with ridicule, but I insisted upon his looking at the abstract himself. He called his deputy and repeated my statement to him. His deputy scouted the idea. We all then proceeded to recount the columns twice, both counts verifying my statement. I asked the deputy to correct the footings accordingly, which he did at once in my presence and that of the secretary, whereupon they proceeded to congratulate me upon the result.

I next day called upon the governor and asked for my certificate of election. He requested me to wait until he could issue to all the members of Congress elect at once. He said that there were questions involved in the determination of the other cases which required time. I urged that as I was shown to be elected independent of all those questions, there was no good reason for delay in my case, and I did not want to be forced to take any legal steps to obtain it by mandamus, as my friends would expect me to do if it was not forthcoming. He requested me to call again next day. I did so, and he gave me my certificate of election on the 14th day of December, 1872.

I left Little Rock about the 20th of January, 1873, for Washington, to spend the remainder of the session here for the advantage of observing the course of legislation before my term commenced, and expecting the Forty-third Congress to assemble on the 4th of March. I remained here attending to some department business for my constituents some time after adjournment, and returned to Little Rock in the latter part of March. It was not until toward the end of that month that I learned Bradley was pretending to contest my seat. I sought his attorney, A. H. Garland, and asked him about it. He laughingly said Bradley had taken some steps I told him I had seen no notice of contest and asked him for a copy of it. He said he would look for it, and let me have a copy if he could find it. He notified me by letter next day that he had no copy of the notice. I learned from the marshal, however, that a copy had been left at the house of Mrs. Raleigh, where I had formerly boarded. I called on Mrs. Raleigh and asked for it; she said that a gentleman had left a paper there for me about two months before that time, but she did not know what it was, and supposing from the manner in which the gentleman had left it that it was of no consequence, she paid little attention to it—had forgotten all about it until then, and did not know what had become of the paper. So that as a matter of fact I never saw a copy of the notice of contest, although I made every effort to get one, until the morning when Bradley commenced taking *depositions, on the 12th* of April, 1873, four months after I had received my certificate.

Now, although his notice of contest was dated fourteen days after his time had expired for serving me with notice, and although notice had never been served on me at all, but left at a boarding-house from which I had removed, yet if I had been able to get a copy of it I should have answered and gone to the merits of the case, waiving all technical bars, as I should not have been satisfied to rest my case upon anything but my election by the people.

I appeared at the taking of depositions, which was commenced several days after all his time for taking depositions had expired, even assuming the legality of all his preliminary steps, and entered my objections to the secret and illegal manner in which he had proceeded, I having no knowledge of his action except from rumor. I entered all my objections and cross-examined his witnesses, showing by his own witness, Secretary of State Johnson, 839 votes which should have been counted for me from Hempstead and Scott Counties, but which were illegally and fraudulently withheld from my count while he was trying to prove 384 votes which he claimed were illegally withheld from him in Pulaski County, where I was cheated over fifteen hundred votes. The question may arise in the minds of those not familiar with the facts why these few misnomers of Bradley in a county where so many hundred frauds were committed in his interest. The answer is that it was a part of the conspiracy of my opponents, designedf or the purpose of throwing a cloud upon my majority. It will be seen by the testimony of Secretary Johnson that a mere memorandum of a part of the vote of Hempstead County, without seal and even without date or anything showing where the votes were cast—signed by one McKelvey, who was never in possession of the office of clerk, and who I prove by Johnson never had qualified as clerk, and could not have acted as clerk under the law (see copy of statute July 9, 1868, accompanying), was counted in my canvass, giving me only 667 votes instead of the true returns from that county under seal of the county court, and signed by the acting bonded clerk of the county court, and which were on file in the office of the secretary of state at the time of the canvass, giving me 1,240 votes, and an additional majority of 386, out of which I had been defrauded in the canvass. I also prove by the same witness that the regular returns from Scott County, under the county seal, giving me 453 additional majority, were in his office, and had been omitted from the canvass of my vote, on the insufficient and fraudulent pretense that the clerk signing the returns had resigned his office, when I could prove that the clerk had not resigned, and that the resignation on file bearing his name was a forgery. I have here stated the substance and result of the evidence taken—an attempt at proving 384 more votes for Bradley, and record evidence of 839 more majority for me. And this is the evidence which Bradley swears I wanted suppressed, but which I have taken pains should be carefully preserved, and have ready to present to the committee in corroboration of my statement. That evidence will not only verify what I state of it, but it will also show how false are several allegations contained in the sworn statement which he has addressed here. His statement of what it proves of Hempstead County will be found to be the very reverse of what the evidence shows. Why he does not there allude to the grounds of contest set up in his pretended notice, for Jefferson and Bradley Counties, is probably due to the fact that the clerk who changed the ballots in the ballot-box in the latter county and in Bradley's own town, in his own and Bradley's interest after the election was over and the returns made, has since been indicted for that happy afterthought of fraud. But that Bradley knew of it, if he was not a party to it, is evident from the fact that he was aware of it in time to put it in his notice of contest long before the ballot-box had been opened, as it was subsequently in another contest, and when no one could have known anything about it who was not in the secret of the fraud.

To show how thoroughly satisfied he was that even his own witnesses had only made my majority and election only more apparent than it was before, removing from it the cloud of the misnomers. So soon as I had drawn out of Secretary Johnson the true returns and votes of Hempstead and Scott Counties, showing 839 more majority to which I was entitled and which had not been counted for me, Bradley, abruptly and with excitement, declared that he had closed his case, although he had several other witnesses there whom he declared just before that he wanted to examine; to all of which, Mr. R. A. Burton, who is now in this city, was a witness, being present.

How thoroughly insincere Bradley was in his pretense of contesting my seat is perhaps sufficiently illustrated by the character of the proof which he took. He furnishes nothing but parol evidence, when that parol evidence itself shows he might have furnished attested copies of the returned poll-books and tally-sheets. I objected to the insufficiency and incompetency of parol testimony when he showed the record to exist, and yet he did not furnish it, showing that he was not in earnest in the contest—not even to the extent of producing copies as exhibits—and this everybody understood.

His statement that I ever approached him, or made any proposition to him of any kind, about stopping his contest, and all the conversation which he swears to as having passed between us on that subject, is pnre fiction. About three days after the closing of the depositions Bradley came to my room, at the Metropolitan Hotel, in the morning, before I was out of bed, and there said to me that Governor Baxter was going to give him an appointment; that he had not yet sent off the evidence taken, and if I would just pay the expenses of the "suit," as he called it, to which he had been to, he would not put me to any more trouble. I asked him what the expenses were. He said he had been involved in over $1,000 expense

in fees, &c., but he would let $1,000 cover it. I told him I had not the money and could not raise it. He then said I could raise him $500 to meet his immediate expenses, and he would wait for the other $500 until I could spare it. I told him I would think about it and see. After he had gone I reflected that it did not in any manner affect my election; that that was over and universally conceded, even by Bradley; that it was only the more firmly established by the evidence which had been taken, and that his proposition involved nothing but a question of personal convenience which I had a right to decide for myself. I remembered that the filing of any paper purporting to be in contest of my seat would suspend the payment of my salary until the 1st of December, and my obligations were out then for nearly $2,000 based upon my expectation to be able to pay them from my salary. My wife was lying seriously ill here at Washington, and I was painfully anxious to come on. These considerations, as well as the great expense of a contest, decided me to suffer him to bleed me that much, affecting, as it did, nothing but my own domestic and financial convenience, and affecting no right but my own individual right to the money which he insisted upon having as the price of my peace from his unwarrantable and dishonest annoyance. That I had no fears for the result of a contest, or that it could affect my seat in Congress in any manner, to my discomfort, the facts which I have presented showing my immense majority, and the evidence taken by Bradley himself, showing my election more strongly than before, all abundantly show. I knew, Bradley knew, and every man in Arkansas knew that I was elected by the largest vote ever polled for any candidate on any ticket in my State.

The significance of the whole contest is explained in this. Bradley knew that Baxter and the rest of his ticket were no more elected than he was. He knew they would understand that in a contest for the State at large I would develop and prove that fact before Congress and the country, and that they had always feared it, and he was sure that by pressing it he could get a good appointment from Baxter. That was all he ever pretended to contest for; it was universally so understood and talked of by everybody, as many persons in this city now can testify. He told me and told others that he was not going to be left out in the cold by them, and if they did not provide for him by a good appointment he was going to show, by pressing me to the contest, that the rest of them were not elected, either. Governor Baxter did appoint him at once to the office of prosecuting attorney for his district.

And now let us inquire the uses and significance of the presence of this document here. He knew that I would do all that I promised as soon as I was able, for he did not doubt a word which I never broke to any man. Did he, then, receive a higher price for it than $500? I infer that he did, from the fact that he has exaggerated the amount to $1,500, which, I take it, he did to enlarge to whomsoever purchased his statement the amount he was sacrificing, in order to raise the price of his perjury. And to whom was it thus valuable and for what use? Last February, when the *prima facie* case of Gunter *vs.* Wilshire, third Arkansas district, was reported from this committee to the House, Judge Wilshire caused to be conveyed to me, through Hon. E. A. Fulton, of Arkansas, who was here at the time, and through my colleague, Hon. O. P. Snyder, the intimation that if I took any part against him and for Colonel Gunter in that case he could get John M. Bradley to swear to something which would give me something else to attend to for a while. Then, as now, conscious of no wrong, and that in all that I had to do with John M. Bradley I had violated no law of God or man, I discharged what I understood to be my duty in that case with my knowledge of the facts, and spoke in behalf of the constituency which, as member at large, I represented in common with them, and as I ever expect to do, for the man whom I knew they had elected, a conclusion in which this committee has agreed with me upon inquiry into the merits of the case.

I am also informed by the Hon. Benton Turner, of Arkansas, now in this city, that Judge Wilshire told him in his office in Little Rock, when Mr. Wilshire was in that city last March, that he proposed to be revenged for the stand which I had taken in his case; that he would procure affidavits from Bradley and "go for" me, *no matter what it cost.* Here it is at last, signed by Bradley, March 30, 1874—not sworn to at first. It seems it was hard even for John M. Bradley to swear to that tissue of falsehood, but he finally came up to the requirements, "Received by W. W. Wilshire, April 14, 1874." See indorsement on the paper, imperfectly crossed out; it was sent back to be sworn to. See date of jurat, "April 29, 1874." When received again he had it dropped in the petition-box by Mr. Wood, of New York, although not a petition, after the Speaker and the Clerk of the House, and several members, had refused to introduce it, as an improper paper. It was intended to be in time, if not to deter me from the performance of my duty when his case came up on its merits, then, if possible, to weaken my influence and question my standing, and, possibly, to impair my efficiency in the humble efforts I was making for the virtue and authority of popular elections and the rule of the majority in Arkansas, in the contest then pending.

This has been Judge Wilshire's only motive that I know of. There has been no personal difference between us of which I am aware. And he has done this although he has frequently talked to me about my overwhelming election—how I ran ahead of my ticket—and within the past forty eight hours has acknowledged to me that he knew I was elected.

This simple unvarnished statement of the facts I submit to the committee with the evidence *that was taken* and Bradley's letter withdrawing from the contest and acknowledging my

election. I stand entirely acquitted in my own mind of any wrong, the infraction of any aw of man or God, or the violation of any right except, perhaps, my own; that the whole thing, from the commencement of the election down to the present hour, was an outrage upon my rights and the rights of the people of Arkansas. I hope I have made it as clear to the minds of the committee as it is to mine.

WM. J. HYNES.

I solemnly swear that the foregoing statement is true to the best of my knowledge and belief.

WM. J. HYNES.

Sworn to and subscribed before me this 8th day of June, 1874.

H. B. SMITH,
*Chairman Committee on Elections.*

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LITTLE ROCK, ARK., *April* 18, 1873.

DEAR SIR: Believing that, upon further or on a complete count of the whole vote of the State, you received a majority of all the votes cast for Congressman at large for the State of Arkansas to the 43d Congress, as held on the first Tuesday in November, 1872, I hereby withdraw from a further contest for said seat in the 43d Congress of the United States, and withdraw all notices and depositions and other papers appertaining to a contest.

Hoping you may prove a faithful and honest Representative of the best interests of the people of the State of Arkansas,

I am, yours truly,

JOHN M. BRADLEY.

Hon. WM. J. HYNES,
*Little Rock, Ark.*

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I certify that I served the within notice on the within-named Hon. William J. Hynes, at the request of Hon. John M. Bradley, by delivering to the Hon. William J. Hynes this the original notice. This in the county of Pulaski, State of Arkansas, city of Little Rock, this April 18, 1873.

W. T. OLIN, *Sheriff.*

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*Copy of act of July* 9, 1868.

*Be it enacted by the General Assembly of the State of Arkansas:*

SEC. 1. That each county clerk shall, by virtue of his office, be clerk of the circuit court, clerk of the county court, clerk of the court of probate, and recorder for his county.

SEC. 2. *Be it further enacted*, That each county clerk, before entering upon the discharge of the duties of his office, shall take and subscribe the oath prescribed in the constitution for officers, and shall enter into bond, with good and sufficient security to the State, in any sum not exceeding fifteen thousand dollars ($15,000), at the discretion of the county court, conditioned that he will well and truly perform the duties of his office, and pay over to the proper officer or person, all moneys that may come to his hands, by virtue of his office, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, papers, records, seals, and furniture belonging to his office; such bond shall be approved by the county court in term-time, or by the presiding judge thereof in vacation, and shall be recorded in said county and filed in the office of secretary of state.

SEC. 3. *Be it further enacted*, That all acts and parts of acts in conflict with this act are hereby repealed, and that this act take effect and be in force from and after its passage.

Approved July 9, 1868.

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## BELL VS. SNYDER.—SECOND CONGRESSIONAL DISTRICT OF ARKANSAS.

Charges alleging that legal voters were fraudulently and illegally refused registration and that the names of qualified electors were stricken from the poll-lists.

The judges and clerks of election in returning votes for contestee failed to state for what office, although it was clearly expressed on each ballot that the ballot was for a Representative in Congress, and he was only a candidate for said office at said election. The county clerk refused to certify to said votes for him to the secretary of state. It was held by the committee that the ballots must be counted.

The declaration of a voter as to how he voted or intended to vote is competent testimony.

Report in favor of the sitting member, O. P. Snyder, adopted December 23, 1874.

Authorities referred to: Constitution of Arkansas, 1872; Election Laws, 1868; Hogan *vs.* Pile, 2 Bartlett, 285; Delano *vs.* Morgan, 2 Bartlett, 170; Vallandigham *vs.* Campbell, 1 Bartlett, 231, 2; Niblack *vs.* Walls, 42d Congress.

December 23, 1874.—Mr. Harrison, from the Committee on Elections, submitted the following report:

From the proclamation of the governor and the certificate of the secretary of state of the State of Arkansas, and the abstract of the returns of the election held in the second Congressional district of that State on the first Monday of November, 1872, O. P. Snyder, the sitting member, and M. L. Bell, the contestant, received the following number of votes in the following-named counties, composing that district, viz:

| Counties. | O. P. Snyder. | M. L. Bell. |
|---|---|---|
| Ashley | 731 | 773 |
| Bradley | 389 | 764 |
| Calhoun | 223 | 490 |
| Columbia | 758 | 1,197 |
| Chicot | 1,551 | 280 |
| Drew | 473 | 1,275 |
| Dallas | 312 | 733 |
| Grant | 169 | 453 |
| Hot Spring | 256 | 667 |
| Hempstead | 1,359 | 663 |
| Jefferson | 2,840 | 1,053 |
| Lafayette | 1,268 | 774 |
| Ouachita | 1,070 | 1,077 |
| Saline | 4 | 769 |
| Union | 1,328 | 858 |
| Nevada | 512 | 918 |
| Lincoln | 376 | 771 |
| Total | 13,619 | 13,515 |

This abstract shows a majority for Mr. Snyder of 104 votes.

The contest is made upon the following grounds, set out in the notice of contest:

1. That in the county of Ashley 250 legal voters, who, the contestant alleges, offered to vote, and would have voted for him, were fraudulently and illegally stricken from the list of voters.

2. That in the county of Bradley 250 legal voters were in the same manner deprived of their suffrages, and offered to vote for contestant, but were refused.

3. That in the county of Union 400 legal voters were illegally and fraudulently refused registration, offered to register and were refused, and all of them intended to vote for contestant, and would have done so if they had been permitted to register and vote.

4. That in the county of Hot Spring 200 legal voters were illegally and fraudulently stricken from the list after the board of registration had adjourned, and all of them would have voted for contestant if they had not been denied the right to vote.

5. That in the county of Hempstead, the vote properly stated and returned to the secretary of state, gave Snyder, the sitting member, a majority of only 315, but a false and fraudulent return of said vote was

made to the secretary of state by an unauthorized person, claiming to be clerk, who gave false and imperfect returns of said election, giving the sitting member a majority of 703, which gives the sitting member 381 votes he is not entitled to.

The answer of Snyder to the notice of contest denies and puts in issue all of the allegations in the notice, and, in addition to such denial of the same, he states the following as showing that the vote of the said Snyder should be greater than as returned.

1. That in Jefferson County and in the township of Bogy there were duly and legally polled for him some 400 votes, and the same were certified to the county clerk, and the judges and clerks returned the said votes for Snyder, but failed to state for what office, and therefore, although it was clearly expressed on each ballot that the ballot was for him for Congress, and that he was only a candidate for said office at said election, the county clerk refused to certify to said votes for him to the secretary of state, and they were never counted, and he claims that the said votes be counted for him.

2. That in the counties of Calhoun, Drew, Bradley, Dallas, and Saline, votes were likewise returned for contestant without stating for what office, and the same were counted and returned for contestant, and if said votes in Jefferson (Bogy Township) are thrown out, the sitting member demands that these votes in the counties above named be also thrown out.

3. That in Drew County the Democratic party, of which contestant was the nominee, by force, threats, and intimidation, kept and prevented divers voters, whose names are unknown (say 300), from voting for the sitting member, and induced, by threats, force, and intimidation, many such persons to vote for contestant.

4. That in the counties of Drew, Calhoun Ouachita, Saline, Ashley, Hot Spring, and Dallas, a large number of persons, 1,000 or more, whose names are unknown, were allowed to register and vote, who were disfranchised by the laws of the state, and said persons voted for contestant illegally and wrongfully. These were the issues made by the notice and answer.

The following are some of the provisions of the constitution and statutes of the State of Arkansas which bear on some of the questions the committee have examined in this case:

By the constitution in force in 1872 certain classes of persons were disfranchised, and a system of registration was established to determine who were qualified electors, under the constitution, by the act approved July 15, 1868.

By this act the governor is authorized to appoint three loyal, competent, and discreet citizens of each county as a board of registration, the president of the board being required to do the active work in registering the voters, and the three to meet at the court-house in their respective counties, during the six secular days next preceding the tenth day before each general election, as a board of review.

Section 9 of the act gives the registrar power to examine on oath all applicants for registration, and upon diligent inquiry to ascertain his qualifications; and if, from his own knowledge or evidence produced, any person is not qualified, he is not to enter his name on the list. The registrar shall issue a certificate to every person who is found to be a qualified elector, showing that said elector is entitled to vote until his certificate is revoked by the board of review.

This board of review acts as a court of appeal and revision, and their

acts are a final adjudication upon the rights of a voter, subject to appeal to the supreme court.

SEC. 12. * * * The said board of review shall pass upon the claims of all persons who have been unable to appear before the registrar of the respective precincts, districts, or wards; upon the claims of persons who consider injustice has been done them by the registrar refusing to record them as qualified voters, and also to any objections made to persons registered as voters.

If such board of review shall be satisfied that any person applying to be placed on the list of voters could not have appeared before the registrar in his precinct, district, or ward, without great inconvenience, they shall place his name, if entitled to be registered as a voter, on the list of the election precinct, district, or ward in which he resides.

If the board shall be fully satisfied, from testimony brought before them, that any person has been rejected by the registrar wrongfully and without cause, they shall place the name of such person on the list of voters of the election precinct, district, or ward in which he resides, and issue him a certificate of the fact, or, if it satisfactorily appears to the board, from their own knowledge or testimony brought before them, that any person has been placed on the list of any election precinct, district, or ward of said county who has been guilty of any of the acts named in the constitution as disqualifying a person to be a voter, they shall strike from the list of voters the name of such person.

SEC. 13. Immediately after the closing of said registration, the registrars shall make out and certify two fair copies for each election precinct, district, or ward in their respective counties, alphabetically arranged, of the names of the qualified voters as ascertained and determined by said board of review, one of which copies for each election-precinct they shall deposit with the clerk of the county court, on or before the Saturday next preceding the election, and the other they shall deliver forthwith to some one of the persons who shall have been appointed to act as judge of the election-precinct, district, or ward for which the list was made, and shall take his receipt therefor.

SEC. 14. * * * The registrars shall, as soon as possible, deposit with the said clerk the original books of registration, which shall be preserved and kept among the records of said court, except when otherwise disposed of as hereinafter directed.

It will be perceived that, by virtue of these provisions, every person who holds a certificate is entitled to vote until his name is stricken from the original list and his certificate revoked.

The board, when in session as a court of review, ascertain and determine who is entitled to vote, subject to appeal to the supreme court; and when they close the registration and adjourn on the sixth day, they are to make fair copies of the list for the clerk of the county and for the judges of election. The original list never goes to the judges of election. The board of review exercises an arbitrary power to strike names from the list on their own knowledge of disqualifying acts, and to revoke certificates already issued; but every name which is on the list, when they close the registration so as to be ready to make copies, is, under the statute, a legal voter, and no power on earth can deprive him of the legal right to vote; after that, no action of the board as a whole, or of any member of the board, or of any other authorities or persons, can invalidate that right.

Section 30 of the election law of July 23, 1868, is in these words:

All persons who present certificates of registration, and whose names appear on the registration-books, shall be entitled to vote at any and all elections authorized by the laws and constitution of this State, and no challenge shall debar such person from voting at any election.

ASHLEY COUNTY.

It is alleged by contestant, in his notice of contest, that in this county 250 legal voters who offered to vote and would have voted for him were fraudulently and illegally stricken from the list of voters. The proof does not seem to be directed so much toward proving that legal voters were stricken from the list of voters as of showing that certain persons in this county who were on the original registration-lists, but not on the copies thereof furnished the precinct judges, were not permitted to vote *notwithstanding* they held certificates of registration.

Under the law every person holding a certificate was entitled to vote until his name was stricken from the original list and his certificate revoked. The position contended for by contestant, sustained by the authorities, cited that where names appear on original registration-books, but do not appear on copies furnished precinct-judges, it is an error to reject the votes of such electors, and that their votes are to be counted (Hogan *vs.* Pile, 2 Bartlett, 285); and that votes of qualified electors should be counted (Delano *vs.* Morgan, 2d Bartlett, 170; Vallandigham *vs.* Campbell, 1 Bartlett, 231; Niblack *vs.* Walls, Forty-second Congress), is undoubtedly correct, but in this case we are to consider the conclusiveness or sufficiency of the proof as to which of the candidates the electors who are shown to have been registered and to have held certificates would have voted for, and what constitutes competent proof thereof.

The contestant proves by W. L. Butler (p. 26) that nineteen men, viz, Henry Herrod, W. L. Howell, John T. Carnoham, James M. Thompson, John Kindness, William Moss, William Turner, Wiley A. Maxwell, Archibald Noble, Samuel R. Clinton, D. T. Barnes, Robert Daniel, William H. Furlow, William S. Martin, John H. Keener, James T. Hill, Richard Evans, W. T. Evans, and Henry A. Hall were duly-registered voters, had certificates of registration, and tendered their ballots and offered and attempted to vote for M. L. Bell, the contestant; that their votes were rejected by the judges of election, and were never counted; and that they made affidavit, and again tendered their ballots, and were refused; and the original affidavits and ballots of seventeen of them are exhibited. Two of them, Howell and Clinton, exhibit their affidavits with their own depositions (pp. 70, 72).

The committee think these 19 votes should be counted for contestant, for Butler, the witness who swears to the facts above stated as to these nineteen voters, was a supervisor of the election, and proves, in addition to the facts stated above, that the affidavits of the parties were deposited with him, as supervisor, on the day of election, and that these parties declared at the time, as the statements in the affidavits show, that they offered to vote for contestant.

The law is settled that the declaration of a voter as to how he voted or intended to vote, made at the time, is competent testimony on the point. (Vallandigham *vs.* Campbell, 1 Bart., 231, 232.)

The statement contained in the affidavits of these 19 voters that they offered to vote the ticket attached to their respective affidavits, on each of which tickets the name of the contestant was found as a candidate for Congress, amounts to a declaration of the voter which brings the case within the rule decided in Vallandigham *vs.* Campbell. These declarations are valid as a part of the *res gestæ;* and these declarations are supported by the testimony of the supervisor, who states the fact that nearly all of these 19 voters made these affidavits when they presented their certificates, and with their ballots attached, and that they deposited them with him, as supervisor, on the day of election.

The objection that this is hearsay evidence, and that the deposition of each particular voter is the only competent evidence of the fact sought to be proven, is not well taken. The witness Butler does not prove what these 19 voters said to him, but what they did. There is a marked distinction between proof of what a party said and proof of acts of the party or facts connected with what he did. In the one case it may be hearsay testimony; in the other it is testimony as to facts which the witness observed, which is just as competent as the testimony of the voter as to facts in which he was an actor.

The 50 votes proven by G. W. Norman, supervisor, Carter precinct, must also be admitted and counted for contestant. The proof, page 88 of the record, shows that 50 voters, whose names are set out, were refused the privilege of voting because their names were not on the township list. They had all of them certificates of registration, and presented them and offered to vote on them, and made affidavits on the day of election, and each of said voters, as said affidavits show, swore that at the election on that day at Carter Township they presented the affidavit annexed, and thereupon offered to vote the ticket attached (including the name of contestant for Congress, second district) and the judges of election rejected and refused to receive the same and to record their votes.

But each one of these affidavits, spoken of by the voters as the "affidavits annexed," shows that their names had been stricken from the registration-books—they say in the affidavit improperly. They show in the affidavits made by them, respectively (and they are uniform), facts which it would seem clearly entitled them to be registered, and which show that they were each duly registered.

The committee present for the inspection of members of the House the two affidavits made by each one of the 50 excluded voters, which, with the ticket attached to each, are samples of all the others. They are as follows:

STATE OF ARKANSAS,
*County of Ashley:*

I, Jason C. Wilson, of the county and State aforesaid, do solemnly swear that I am a male person over twenty one years of age, and have been a resident of the State of Arkansas more than six months previous to this date, and an actual resident of Ashley County, in the State of Arkansas, and am not disqualified from registering and voting by any of the subdivisions one, two, three, four, five, and six, of section three of article eight of the constitution of the State of Arkansas; and that, on the 10th day of October, 1872, I presented myself for registration as a voter to C. W. Gibbs, president of the board of registrars for Ashley County, in said State, duly appointed by the governor of said State, and acting, and at Hamburgh, the place designated by the advertisements of the said president of said board for the registration of the voters of Carter Township, in said county, and on the day and between the hours designated in said advertisement, and did take the oath prescribed by section five of article eight of the constitution of the State of Arkansas, and that I was registered by said board of registrars as a legal voter for said township, in said county, and that my name has been improperly stricken from the registration-books.

JASON C. WILSON.

Sworn to and subscribed before me, an acting and duly-commissioned justice of the peace for Ashley County, in the State of Arkansas, this 5th day of November, 1872.

THOS. J. WELLS,
*Justice of the Peace.*

REFORM TICKET.

*For electors for President and Vice-President.*—Jordon E. Cravens, Robert C. Newton, James H. Fleming, Poindexter Dunn, George P. Smoote, Walter O. Lattimore.
*For governor.*—Joseph Brooks.
*For lieutenant-governor.*—Daniel J. Smith.
*For secretary of state.*—Edward A. Fulton.
*For auditor.*—James R. Berry.
*For treasurer.*—Thomas J. Hunt.
*For attorney-general.*—Benjamin T. Du Vall.
*For superintendent of public instruction.*—Thomas Smith.
*For associate justices of supreme court.*—William H. Harrison, John T. Bearden.
*For superintendent of penitentiary.*—William L. Cook.
*For Congressman at large.*—William J. Hynes.
*For Congress, second district.*—Marcus L. Bell.
*Twenty second senatorial and representative district.*—For senators: Isaac Newton, Francis C. Downs. For representatives: X. J. Pindall, O. F. Parish, I. L. Brooks, J .T. W. Tiller, Cur Trotter, M. W. Gibbs.

COUNTY TICKET.

*For county judge.*—John Hill.
*For sheriff.*—M. H. Dean.
*For coroner.*—H. W. Wade.
*For clerk.*—W. J. White.
*For treasurer.*—William B. Stell.
*For surveyor.*—William Hughes.
*For tax-assessor.*—John A. Simpson.
*For justices of the peace for Township.*—Tally, Halley, Wood.
*For constable.*—Harris.

STATE OF ARKANSAS,
*County of Ashley:*

I, Jason C. Wilson, of the county and State aforesaid, do solemnly swear that, upon the 5th day of November, A. D. 1872, at the general election for Representatives in Congress and presidential electors, held at said time, I did present before the judges of election for the precinct of Carter, county of Ashley and State of Arkansas, the affidavit hereunto annexed, and upon said affidavit I did offer to vote the ticket thereunto attached; and that said judges of election in the precinct aforesaid did reject and refuse to receive the same, and to record my said vote thereunder.

JASON C. WILSON.

Sworn to and subscribed before me, an acting and duly commissioned justice of the peace for Ashley County, in the State of Arkansas, this 5th day of November, 1872.

THOS. J. WELLS, *J. P.*

The committee would have felt bound to refuse to count these fifty votes for contestant, as the affidavits of the voters themselves showed that their names had been stricken from the registration-books, and because under the laws of Arkansas then in force the board of review, provided for in the act of July 15, 1868, were authorized in the cases or for the causes mentioned in the twelfth section of that act to strike any voters from the list; but the committee found, by reference to the proof on the subject, the following state of facts, as shown by the depositions of C. C. Allen and James Hawkins, two of the three members of the board of review (pp. 23, 24, 25 of the record), that these witnesses and C. W. Gibbs, who was president of the board, acted as the board of review in Ashley County, and that there were no names of any voters stricken from the list by authority of the board after the board adjourned, and none were authorized by the board to be stricken from the list during the sitting thereof, except John Hill and two or three others, and the witness Allen says, in relation to them, that he does not know that the board authorized them to be stricken from the list. The fact that these fifty persons, whose names did not appear in the precinct lists as registered voters, were not stricken from the original list by authority of the board of review is still further shown by the deposition of W. T. Evans, supervisor of Ashley County (record, page 25), which is as follows:

W. T. EVANS, a witness, being introduced, sworn, and examined, deposeth and saith for contestant. (G. W. Norman and Van Gilder and McKelvey present as counsel for contestant, and Hon. O. P. Snyder, in person, and W. D. Moore, as attorney, present for contestee.)

Questions by contestant:

Question. What is your name, age, and residence?—Answer. My name is W. T. Evans; age, 33; and reside in Arkansas.

Q. Are you a qualified and legal voter in Ashley County, Arkansas?—A. I am.

Q. Did you act as supervisor of the election in Ashley County on the 5th day of November, 1872, for the election of Congressman to the Forty-third Congress?—A. I did.

(Contestee objects, as it is a matter of record, which is the best evidence, and as it does not apply to the allegations of contestant.)

Q. As such supervisor were you present at all the sittings of the board until its adjournment?—A. I was.

(Contestee objects, as it is an irrelevant answer and is not applicable to the allegations in the bill.)

Q. Did said board of review authorize the striking off or omission of any names during its session from the original list of registered voters?—A. It did not.

Q. Did you speak to any of the registrars in regard to the striking off or omission of any names?—A. Mr. Bird in my presence asked this question of the board of review: "Now the board of review has adjourned let us understand this matter. Has any names been stricken from the books?" And C. W. Gibbs, who was president of said board, replied, "None have been stricken."

(Contestee objects because it is not pertinent to the issue, and a conclusion of law and not of facts.)

Q. What persons comprised the board of review?—A. C. W. Gibbs, James Hawkins, and C. C. Allen.

(Contestee objects because it is a matter of record, which is the best evidence, and, unless the absence of the record is accounted for, not competent.)

Q. Is C. W. Gibbs dead?—A. It is generally reported and believed that he is. I heard a man who helped bury him say he was dead.

W. T. EVANS.

The committee concludes, therefore, that the proof shows that these 50 voters were duly registered voters; that they held certificates and their names were regularly on the original list of registration; that they were not stricken from the list by any competent authority; that they were entitled to vote; that they offered to vote, and should have been permitted to vote the ticket appended to their affidavits respectively; that the failure to place their names on the precinct lists, and the refusal of the officers at the election to permit them to vote was a gross fraud upon their rights, and that the votes must be counted for contestant.

As to the claim that 20 registered voters who were refused the privilege of voting at Portland Township, in Ashley County, should be counted for the contestant, it is not so clear.

L. Bloomer, supervisor at that precinct, in his deposition, page 164, states that the 20 persons whose names are given by him had certificates of registration, and that he saw all of them registered except two, and that they would have voted for contestant if they had been allowed to vote; that they presented their certificates of registration and offered to vote; then made affidavit and offered to vote; and he appends to his deposition the affidavit and ballot of 8 of the 20, which he says is all he can produce. He says that he did not read all the tickets, but to the best of his knowledge the parties would have voted for Bell, as all the reform tickets were alike.

The committee regard the fact of these 20 persons having been registered as voters as sufficiently proven, but the proof as to the fact that all of them offered to vote for contestant, or that they intended to or would have voted for contestant, is insufficient; some of them filed or made affidavits, attaching thereto the ballot offered by them respectively, on the day of election, and their votes should be counted for contestant, viz: C. M. P. Grantham, p. 166; J. J. Smith, p. 167; R. S. Wilson, p. 168; Harrell Wells, p. 169; J. H. Wilson, p. 170; J. L. Sanford, p. 172; J. A. H. Wilson, p. 171; James E. Smith, p. 165. And the following persons deposed as to the fact of their having offered to cast the ballot (including the name of contestant for Congress) referred to, to wit, R. S. Wilson, p. 56; J. M. Chairs, p. 49; Samuel B. Brady, p. 52; William B. Brown, p. 54; L. B. Saunders, p. 54; William H. Barringer, p. 57; Jesse George, p. 64; J. B. Kinnabrew, p. 77; S. S. Bell, p. 77; in all, 17 votes.

In Extra and Union Townships there were 20 voters whose depositions are found on pp. 47, 50, 54, 58, 60, 62, 65, 68, 74, 77, 78, 80, 82, 84, 86, 173, 175, 177, and 179, and who state that they were registered voters, and presented their certificates, and offered to vote for contestant, but were refused.

*The names of* some of these witnesses, 13 in number, were not inserted

in the notice to take depositions, but the counsel of the sitting member was present at the taking of the deposition, made no objection, and thus waived it. These 20 votes must be counted for contestant; so that, to resume, he is entitled to have the following in Ashley County added to his vote:

| | Votes. |
|---|---|
| In De Bastrop Township | 19 |
| In Carter Township | 50 |
| In Portland Township | 17 |
| In Extra and Union Townships | 20 |
| In all | 106 |

BRADLEY COUNTY.

At Pennington precinct, as shown by the testimony of John R. Bennett, United States supervisor, there were 16 registered voters who offered to vote for contestant, whose ballots were refused. The affidavits of these 16 voters, with the ticket they offered to vote attached, shows all the facts to justify the committee in counting these votes for the contestant. (See record, pages from 191 to 213 inclusive.)

To these 16 votes must be added the vote of James M. Gill, page 184, making 17 votes to be counted for contestant.

UNION COUNTY.

In this county there was evidently fraud practiced by the officer holding the election, but the proof is general, and is not of a character to justify the committee in sustaining the claim of contestant.

HOT SPRING COUNTY.

The proof shows that 68 votes were cast for contestant at Saline Township. The county records were burned, and by mistake the vote of the precinct was not counted. (See record, pp. 216, 217, 218, 219, 220, and deposition of secretary of state, page 6.)

But in this county there must be four votes deducted from Bell's vote, the same being cast by persons shown by the proof to be non-residents of the second Congressional district. (Record, p. 318.)

The proof also shows that 94 votes were inserted in the returns from this county for Mr. Bell, which were never cast for him, and 65 votes were handed to the secretary of the reform central committee, and given by the said secretary, Charles J. Peshall, to Mr. Bassett, the county clerk, who certified and counted said 65 votes for contestant to the secretary of state. There were no affidavits with the ballots, nor were they returned by the judges or clerks or judges of Hot Spring Township, or any other township in said county. (See dep. of Charles J. Peshall, E. A. Nichols, and A. H. Bassett, pp. 317, 318, 319, 320 of the record.) These votes, it is clear, should be deducted from the vote counted by the secretary of state for the contestant.

JEFFERSON COUNTY.

In this county there were cast at Bogy Township for Snyder 423 votes, and for Bell 37 votes. (See small pamphlet of evidence, page 5, *et seq.*) And the returns for this township were never counted by the secretary of state for the reasons stated in the proof, and, as will be seen by the

certified transcript from the secretary's office, filed with the committee, 423 votes should now be added to Snyder's vote, and 37 votes to Bell's vote.

HEMPSTEAD COUNTY.

In this county the official abstract made by the secretary of state gives Mr. Snyder 1,359 votes, and Mr. Bell 663 votes; a majority for Snyder of 696 votes. The abstract was based on a return made by one McKelvey, who claimed to be clerk of the county court of Hempstead County, and included only seven of the eleven townships of the county. The McKelvey return is as follows:

| Names of candidates. | Townships. | | | | | | | Totals. |
|---|---|---|---|---|---|---|---|---|
| | Ozark, No. 1. | Ozark, No. 2. | Columbus. | Fulton. | Martinsville. | Wallaceburgh. | Pleasant Grove. | Total votes. |
| *For Congress, second district.* | | | | | | | | |
| O. P. Snyder received | 421 | 402 | 243 | 115 | 67 | 79 | 32 | 1,359 |
| M. L. Bell received | 122 | 162 | 101 | 60 | 77 | 93 | 48 | 663 |

The following is the return made by S. P. Sanders, clerk of said county, of the entire eleven townships, giving Snyder 1,551 votes, and Bell 1,236, or a majority of 315 for Snyder instead of a majority of 696 votes. (See page 18 of the record.)

*Abstract of the votes cast for Congressman of the second district of Arkansas, at a general election held in Hempstead County November* 5, 1872, *made from the return of the judges and clerks of election, filed in my office, and opened and published by me November* 9, 1872.

| Voting precincts. | For O. P. Snyder. | For Marcus L. Bell. |
|---|---|---|
| Ozan No. 1 | 421 | 122 |
| Ozan No. 2 | 402 | 162 |
| Martinsville | 67 | 77 |
| Wallaceburgh | 79 | 93 |
| Pleasant Grove | 32 | 48 |
| Nashville | 73 | 159 |
| Mineral Springs | 49 | 163 |
| Columbus | 243 | 101 |
| Fulton | 115 | 60 |
| Spring Hill | 61 | 164 |
| Center | 9 | 87 |
| Total | 1,551 | 1,236 |

O. P. Snyder ..... 1,551
Marcus L. Bell ..... 1,236

315

Witness my hand and official seal as clerk of Hempstead County, November 9, 1872.
*[SEAL.]*
S. P. SANDERS, *Clerk.*
By A. E. EAKIN, *Deputy Clerk.*

In the first place, the abstract made by the secretary of state was based on this return made by McKelvey, which omitted four of the precincts in Hempstead County. In the second place, Sanders was the clerk *de facto* and *de jure*, and McKelvey was not, as appears by the deposition of Andrew E. Eakin, page 14, and Exhibit No. 1, attached thereto, and which deposition is as follows (pages 15, 16, and 17), viz:

Question. Who was clerk of said county on 5th November, 1872?—Answer. Simon P. Sanders was appointed clerk of said county on said 5th November, by the county judge in vacation, and was confirmed county clerk by the county court in session on the 6th November, 1872, gave bond as required by law (which bond was duly approved by the court), qualified, and took charge of the office, books, papers, records, &c., same day.

3. Q. How long did Sanders act as clerk, aforesaid?—A. From 6th November, 1872, to 5th December, 1872.

4. Q. How do you know Simon P. Sanders was duly appointed county clerk, as you have stated above?—A. By my own personal knowledge and inspection of his appointment as such, and examination of the county-court record showing the approval of his appointment, the approval of his bond as such, and his qualifying as such, all of which is copied and attached hereto, marked Exhibit No. 1, and is a part of this deposition.

Exhibit No. 1 to Eakin's deposition is a transcript of the record of the county, showing Sanders's appointment and qualification.

And, in the third place, the proof shows that Sanders did, and McKelvey did not, canvass the precinct returns, and prepare the county abstract or returns; and, in the fourth place, the proof shows that McKelvey never had possession, custody, or control of the precinct returns of the office.

And the committee, if there was not an insuperable objection to the admissibility of the testimony showing what has hereinbefore been stated as to this vote in Hempstead County, and in the absence of any rebutting testimony, would be inclined to put the vote of this county down as showing a majority of 315 votes for Mr. Snyder, instead of 696, as it is in the abstract certified by the secretary of state; but the testimony, showing the grounds for reducing Snyder's vote 381 votes, was taken by Mr. Bell, the contestant, after the expiration of the forty days allowed him by law for taking proof, and Snyder entered and filed his formal written protest at the time; and the committee cannot sanction a practice in violation of the law, especially when exception was taken at the time to the taking of the testimony. It will be seen hereinafter that even if this proof, as to the vote in Hempstead County, was admitted (which the committee do not feel justified in sanctioning), Snyder's majority would simply be reduced.

## DREW COUNTY.

It is claimed by the sitting member that there were such failures to comply with the election laws, and such irregularities in relation to ten precincts in this county, as to justify the rejection of votes returned for the contestant.

The clerk of the county court made and certified to the secretary of state an abstract of returns which included all the precincts in the county, which showed 1,275 votes for contestant, Mr. Bell, and 473 for Mr. Snyder.

The proof shows that there were fourteen precincts in the county; that four of them, Marion, Crook, Bartholomew Church, and Ferguson Townships, made returns according to the laws of the State, but that there were irregularities in the returns of the other ten precincts, as follows:

*Saline.*

The poll-books not signed or sworn to by either the judges or clerks of the election, and the returns were not received by the clerk sealed up as required by law, "but in a loose form." (See record, p. 292.)

*Selma (Franklin Township).*

Ballots delivered to clerk unsealed and open, and were numbered contrary to law. No name was signed to tally-sheet or poll-book, nor did return show that any oath was administered to the judges and clerks (p. 291); and further, as shown by the deposition of William P. Montague, who gave the statement on which the abstract was made to the county clerk (p. 293), that there was not any vote cast for Congress at said precinct.

*Spring Hill.*

There is in this precinct or township no signature to the poll-books and no certificate that it is correct (p. 292).

*Prairie Township.*

The returns were not authenticated by the judges, but were signed by the clerk. There is no statement or oath thereon that they are correct (p. 292).

*Bear House Township.*

The returns were not authenticated, nor was there any statement thereon that they were correct (p. 293).

*Collins Township.*

No signature to or evidence that the poll-book is correct.

In none of the ten township returns is there anything, as the proof, showing that the votes were cast for Snyder for Congress or for Bell for Congress, except in the Selma returns; and the clerk, when examined as to whether the returns showed the number of votes cast for Congressman, second district Arkansas, answered that he determined that, as best he could, from the papers returned to him from the election (p. 294).

And the clerk states that he would not have been able to make a return correctly as to the number of votes cast for members to Congress from the second district, from the seven precincts of Saline, Selma, Spring Hill, Prairie, Bear House, Collins, and Clear Creek, and that no other man could. In these precincts there were returned for Bell 611 votes, and for Snyder 105, and, assuming that they should be counted out for the reasons stated, 506 votes would have to be deducted from contestant's vote.

The committee regard the irregularities in the returns mentioned as very great. There is a palpable failure to comply with several of the provisions of the laws of Arkansas in relation to these returns, and in many of them there is nothing to indicate the county or State, or at what election, the votes were given, or the office for which the contestant or contestee were candidates, and, besides, the clerk of the county

court who took charge of these returns, as his deposition shows, states that he would not have been able to make out a return correctly as to the number of votes cast for the candidates for Congress, and that "no other man could."

But the committee, in the view they have taken of this case, have not found it necessary to rule upon the question of the propriety of deducting this 506 votes from the vote of the contestant, Mr. Bell, for without deducting this 506 votes from the vote of Mr. Bell, the sitting member, Mr. Snyder, has a majority and was duly elected, as the following summary will show:

| | | | |
|---|---|---|---|
| O. P. Snyder's vote, as certified by the secretary of state | | | 13,619 |
| Add vote of Bogy Township | | | 423 |
| | | | 14,042 |
| M. L. Bell's vote, as certified by the secretary of state | | 13,514 | |
| Add votes rejected, Ashley County | | 106 | |
| Add votes rejected, Bradley County | | 17 | |
| Add votes omitted by mistake, Hot Springs | | 68 | |
| Add votes Bogy Township, Jefferson County | | 37 | |
| | | 13,743 | |
| Deduct 4 votes Hot Springs County ast by non-residents of district. | 4 | | |
| Deduct votes Prairie Township, Hot Springs County, fraudulently inserted | 94 | | |
| Deduct votes Hot Springs precinct, Hot Springs County | 65 | | |
| | | 163 | |
| | | | 13,580 |
| Showing a majority for sitting member of | | | 462 |

The committee therefore recommend the adoption of the following resolutions:

1. *Resolved*, That M. L. Bell, the contestant, was not elected a Representative in Congress to the Forty-third Congress from the second Congressional district of Arkansas, and is not entitled to a seat on this floor.

2. *Resolved*, That the sitting member, O. P. Snyder, was duly elected a Representative in the Forty-third Congress from the second Congressional district, and is entitled to his seat as such Representative.

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## GEORGE Q. CANNON, TERRITORIAL DELGATE FROM UTAH.

By resolution of the House of Representatives, adopted May 12, 1874, the Committee on Elections were instructed and authorized to investigate charges made against the sitting Delegate of felony, under the United States statute of July 1, 1862, and ineligibility by reason of his taking and never having renounced an oath inconsistent with his duties and allegiance to the Government of the United States.

Majority report that the charges were sustained, and that the sitting delegate is disqualified, and unworthy to hold a seat in the House.

Minority report.

February 9, 1875.—The House refused to consider the resolution at this time: Yeas, 20; noes not counted.

Authorities referred to: U. S. Statutes at Large, vol. 12, page 541; An act defining the qualifications of Territorial Delegates in the House of Representatives, 43d Congress, 1st session.

January 21, 1875.—Mr. H. Boardman Smith, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom were referred certain charges made against Mr. George Q. Cannon, Delegate from Utah Territory, respectfully report:*

That a majority of the committee have instructed the chairman thereof to report to the House the accompanying resolution, that the subject may be formally brought before the House:

In the matter of certain charges preferred against George Q. Cannon, Delegate from the Territory of Utah.

Report from the Committee on Elections.

On the 12th day of May, 1874, the House of Representatives for the Forty-third Congress adopted the following preamble and resolution, viz:

Whereas George R. Maxwell has prosecuted a contest against the sitting member, George Q. Cannon, now occupying a seat in the Forty-third Congress as Delegate for the Territory of Utah, charging, among other things, that the said Cannon is disqualified from holding, and is unworthy of, a seat on the floor of this House, for the reason that he was, at the date of his election, to wit, on the 5th day of August, 1872, and prior thereto had been and still is, openly living and cohabiting with four women as his wives, under the pretended sanction of a system of polygamy, which system he notoriously indorses and upholds, against the statute of the United States approved July 1, 1862, which declares the same to be a felony, to the great scandal and disgrace of the people and the Government of the United States, and in abuse of the privilege of representation accorded to said Territory of Utah; and that he has taken, and never renounced, an oath which is inconsistent with his duties and allegiance to the said Government of the United States; and whereas the evidence in support of such charge has been brought to the official notice of the Committee on Elections: Therefore,

*Resolved*, That the Committee on Elections be, and is hereby, instructed and authorized to investigate said charge, and report the result to the House, and recommend such action on the part of the House as shall seem meet and proper in the premises.

Pursuant to the said resolution the Committee on Elections requested the above-named George Q. Cannon to appear before the said committee, and were informed by him that he had no objections to the use by the committee of the testimony taken in the contest between George R. Maxwell and himself, heretofore submitted to the committee and referred to in the foregoing preamble upon this investigation, and that he had no desire to submit any testimony or statement to the committee by way of controverting the same. The committee subsequently requested the said George Q. Cannon to appear before the committee on the occasion of taking the testimony of Miss Belle Kimball, hereinafter set forth. Mr. Cannon appeared, but declined to cross-examine said witness, and again indicated that he had no evidence or statement to submit. Your committee respectfully submit the following testimony to the House in support of the charges made and preferred against the said George Q. Cannon, as set forth in the preamble to the foregoing resolution.

TERRITORY OF UTAH,
*County of Salt Lake, ss:*

Personally appeared before the undersigned Emeline Smith, who, being duly sworn according to law, deposes and says that she has been a resident of Salt Lake City, Utah Territory, for the past twenty-three years, and was only one and a half years old when brought here.

Deponent further says that she has been acquainted with George Q. Cannon and his family for at least eight years; that his first wife is named Elizabeth Hoagland Cannon; his second wife, Sarah Jane Jenney Cannon; his third wife, Eliza Cannon; his fourth wife, Martha Telle Cannon; also, that she has been a frequent visitor at George Q. Cannon's house, and that she has heard the said George Q. Cannon, in his house, as well as at the

tabernacle, in Salt Lake City, also at the funeral of Mrs. Ordine Kimball, in the nineteenth-ward school-house in said Salt Lake City, Utah, acknowledge that the said Elizabeth Hoagland, Sarah Jane Jenney, Eliza, and Martha Telle Cannon were his wives; also, that Mrs. Whatmore, a school-teacher, is sealed in marriage to the said George Q. Cannon, and has heard the said plural wives speak of said Cannon as their husband, and especially the second wife.

Deponent further says that her life has been repeatedly threatened, and at one time was obliged to seek protection of the United States authorities at Camp Douglas, and in other ways persecuted by the Mormon people for my gentile proclivities. I was turned out of my father's house because I visited the body of Dr. Robinson, who had been murdered. The ward teachers have also been around the ward where I live in said Salt Lake City, forbidding any one to employ me or give me any assistance whatever.

MRS. EMELINE SMITH.

Subscribed and sworn to before me this 22d day of January, A. D. 1873.

WM. P. APPLEBY,
*Register in Bankruptcy, District of Utah.*

JANUARY 16, 1873.

WILLIAM P. APPLEBY, a witness for the contestant, introduced, and after being duly sworn, deposes and says:

Question. What is your name, age, and place of residence?—Answer. My name is William P. Appleby; age, thirty-five years, and reside in Salt Lake City.

Q. How long have you resided in Utah?—A. Since October, 1849.

Q. Are you acquainted with George Q. Cannon, Delegate-elect to Congress from Utah; if so, how long have you known him?—A. I have known him by reputation some twenty-three years and have been acquainted with him for about fifteen years.

Q. Are you acquainted with his family?—A. I am acquainted with two members of his family, his first wife, Elizabeth Hoagland, and his second wife, formerly Sarah Jane Jenney.

Q. How long have you known them?—A. I have known Elizabeth Cannon, his first wife, since 1851, and his second wife, Sarah Jane Jenney, since 1853.

Q. Is Elizabeth Cannon, his first wife, now living?—A. She is.

Q. Has she any children? If so, give their names.—A. She has children. I do not know how many, nor do I know their names.

Q. Is Sarah Jane Jenney living; if so, where?—A. She is living, but I do not know in what part of the city she is.

Q. Has she children?—A. She has.

Q. What is the general accepted report throughout the Territory of Utah in reference to George Q. Cannon being a polygamist?—A. It has been generally understood by the community throughout the Territory that George Q. Cannon has been a polygamist and is one now, and I have never heard it denied.

Q. Have you taken the Salt Lake City Tribune for the last year?—A. I have.

Q. Prior to the last election, and subsequent to the nomination of George Q. Cannon, was the fact generally published in that paper that George Q. Cannon was a polygamist?—A. It was.

Q. Was it also published that he was thereby ineligible?—A. It was.

Q. Who control elections in this country?—A. So far as I have had any experience in elections in Utah Territory, the elections have been controlled by the authorities of the Mormon Church.

Q. By what means?—A. By the power of their so-called priesthood, that they exercise upon the minds of their followers.

Cross-examination:

Q. You state that Mr. Cannon has two wives, whose names you mention. State how you know the fact.—A. The first wife I was acquainted with when she was a young lady, before her marriage. Her father being the bishop of the ward, the young people used to visit there frequently. Her parents intimated to the young men visiting there that she was engaged to be married to George Q. Cannon, and would marry him on his return from the Sandwich Islands. After his return from the Sandwich Islands it was reported in the community that she had married him, and she has since lived with him as his reputed wife. My knowledge in relation to the marriage of Sarah Jane Jenney to George Q. Cannon is derived from her own declaration made to me, to the effect that she had married George Q. Cannon. This declaration was made to me in conversation on the street. We being old acquaintances, I was curious to know who she had married. George Q. Cannon was not present.

Q What are your means of knowing, as you have sworn, that the priesthood exercise control at the elections?—A. I have lived among the Mormon community ever since I was four years old, and am familiar with the system of their religion. Their doctrines are that all political considerations should be sacrificed to the interest of their church organization,

and in carrying out this their favorite doctrine, I have heard their bishops and elders counsel their followers that it was necessary to their salvation to do everything as a unit, even to voting, and that if they did not have officers elected by the presidency of the church to administrate in their different offices, outsiders would get in among them, and they would thereby become scattered and broken up.

WM. P. APPLEBY.

Subscribed and sworn to before me this 21st day of February, A. D. 1873.
[SEAL ] C. MYRON HAWLEY,
*Clerk Supreme Court for the Territory of Utah.*
Per R. C. CARLTON,
*Deputy Clerk.*

JANUARY 15, 1873.

SARAH M. PRATT sworn.

Question. State your name and place of residence.—Answer. My name is Sarah M. Pratt; Salt Lake City my residence.

Q. How long have you resided in Utah Territory?—A. Twenty-one years; all but three years of the time in Salt Lake City.

Q. Are you the wife of Orson Pratt?—A. I am.

Q. Are you acquainted with George Q. Cannon and his family?—A. Yes.

Q. How many reputed wives has he?—A. He has three reputed wives and one wife.

Q. What is his wife's name?—A. Elizabeth Hoagland, before he married her.

Q. Were you acquainted with her before he married her?—A. I knew her; not particularly acquainted with her. I knew her family.

Q. Is she now living?—A. I never heard of her death. I presume she is living.

Q. What are the names of his reputed wives?—A. The first one that he took after his wife was Sarah Jane Jenney; the next was Eliza, I think—the other name I do not remember; the third one was Martha Terry, I think.

Q. Has George Q. Cannon ever introduced any of his pretended wives to you as his wives?—A. Yes.

Q. Who were they?—A. Martha and the one called Eliza.

Q. Has Martha any children?—A. She has a pair of twins, or did have the last I knew of her, and presume she still has them. I don't know.

Q. Has Eliza any children?—A. She has one. George Q. Cannon told me himself that Eliza had one. I met him a few days after it was born, and he told me that she had.

Q. At the time George Q. Cannon told you that Eliza had a child did he acknowledge that he was the father?—A. I don't know that he did.

Q, Have you ever seen George Q. Cannon in the presence of his children?—A. O, yes; frequently.

Q. Did he treat them as a father, and did he call them his children?—A. He did.

Q. Were these children so treated—the children of his pretended wives?—A. After showing me these boys, he, as a man would who felt proud of his children, told me one belonged to Sarah Jane and the others to his first wife.

Q. Was there any distinction made in the treatment of those children?—A. I couldn't see that there was.

Q. Does the family of George Q. Cannon all reside in one house?—A. I believe they do, since the large house was built. Mrs. Cannon told me when it was building that it was intended for them all.

Q. Did you ever hear Mrs. Cannon speak of the other wives or their standing in the family?—A. I have.

Q. Was Mrs. Cannon somewhat offended at the assumption of these pretended wives?—A. Yes, she was, as all first wives are.

Q. Is Eliza reported to be dissatisfied with her marriage relations?—A. I have heard so, but don't know anything about that. I want to tell you a little more about Mrs. Cannon. Mrs. Cannon told me that George Q. took Martha contrary to her wishes (this was soon after he took her), and she said the most of his time had been spent with her, to the great distress or annoyance of her and the rest of the family—and the other women, I mean. Sarah Jane told me the same thing at another time.

Q. Is it a general, accepted, common report throughout the community and neighborhood that George Q. Cannon is living in polygamy?—A. It is generally so understood. I have never heard it disputed in fifteen years. I have often heard him speak of his wives, and never heard him deny it.

Cross-examination:

Q. Did you say you were the wife of Orson Pratt?—A. I am the wife of Orson Pratt, sr. I am not living with him now. I was formerly a member of the Mormon Church, and don't know that I have been cut off. I have not been a believer in the Mormon doctrines for thirty years, and am now considered an apostate, I believe.

*Q. Did you ever see* George Q. Cannon married to any one?—A. No.

Q. Do you know that he has more wives than one, except by general reputation?—A. No, I do not; except by the information I have given, and what I have heard him say, as I have related.

Q. Do you know, except by general repute, that those children spoken of by you as belonging to Martha, Eliza, and Sarah Jane are the children of George Q. Cannon?—A. I only know so far as the information I have given will convey the idea.

Q. Isn't it a portion of the Mormon doctrine and the practice of the Mormon Church to marry wives for the next world, with whom they do not cohabit and live with as wives in this world?—A. Yes.

Q. Is it not the custom among the Mormon people to address each other as brother and sister and other relations which they do not sustain to each other?—A. Yes; which they do not sustain, except by church rules.

Redirect examination:

Q. Is it customary among the Mormons for a man to introduce and speak of a woman as his wife and of her children as being his own when he does not claim to bear that relation between them?—A. It is not.

Recross:

Q. Supposing that a man had married a wife according to the customs of the Mormon Church for the future world, with whom he did not cohabit and live with as a wife in this, in introducing her would he not introduce her as his wife?—A. He very likely would do that, but they are not anxious to do so. They often do introduce them as such when they can't very well help it.

Q. Supposing that a woman thus married, as stated in the above question, was a widow before her last marriage, and had children, would not the person marrying her be likely to introduce her children as his children?—A. If a man marries a woman for eternity, it is supposed that her children are his, no matter who may be the father, and, of course, would be likely to introduce them as his under those circumstances.

Redirect examination:

Q. When George Q. Cannon introduced and spoke of his wives to you, did he introduce them as his wives for the future world only, or did he convey the idea that they were his wives for this world as well?—A. He did not explain the matter, but simply introduced them as "My wife, Martha," "My wife, Eliza."

SARAH M. PRATT.

Subscribed and sworn to before me this 15th day of January, A. D. 1873.

WM. P. APPLEBY,
*Register in Bankruptcy, District of Utah.*

D. R. FIRMAN sworn.

Question. State your name, age, and place of residence.—Answer. D. R. Firman; my age is thirty-five years; and my place of residence, Salt Lake City.

Q. How long have you resided in Utah?—A. I have resided here about nine years.

Q. Are you acquainted with George Q. Cannon?—A. I am, slightly.

Q. Where does he reside?—A. In Salt Sake City.

Q. How many wives, or pretended wives, has George Q. Cannon got?—A. He has four, I believe.

Q. Do you know their names?—A. I do. The name of the first wife is Elizabeth; the second one is Sarah Jane, I think; the third is Eliza; the fourth Martha.

Q. Give the names of the children of each wife, as far as you know.—A. The first wife, Elizabeth, has four; I think she has five. They are John, Abel, Mary, and Lillian; I think she has another, named Rozina. Eliza has none that I know of. Martha has two, twins—Esther and Amelia. I do not know whether Sarah Jane has any.

Q. How many of those wives live at the residence of George Q. Cannon?—A. All of them, I believe.

Q. How many of them have you seen living there?—A. I have seen three of them living there.

Cross-examination:

Q. What official position do you hold in Utah Territory?—A. I was deputy United States marshal for two or three years.

Q. Are you now, or have you ever, in any way, been connected with the Mormon Church?—A. Never.

Q. Have you ever visited the house of Mr. George Q. Cannon? How often, and when?—A. Yes; once or twice, two or three years ago.

Q. For what purpose did you go there then?—A. On business.

Q. Were you ever present when George Q. Cannon was married to any woman?—A. Never.

Q. Did George Q. Cannon ever introduce any of these women to you as his wives?—A. No.

Q. In what manner did you become acquainted with them?—A. I don't know that I am acquainted with them; don't know if I would know them by sight now.

Q. Are you acquainted with any of his children?—A. I did know some of them by sight.

Q. Do you know anything about George Q. Cannon's marriage relations, except by report and general reputation?—A. I did know Martha, and have been told by her friends that she married George Q. Cannon. I know nothing further, outside of common report, that I am at liberty to disclose.

Q. Do you, or do you not, know anything further?—A. I do, but cannot disclose it.

D. R. FIRMAN.

Subscribed and sworn to before me this 16th day of January, 1873.

WM. P. APPLEBY,
*Register in Bankruptcy, District of Utah.*

The following is the testimony showing common fame or reputation on the same subject.

Mr. Taylor, on page 19, printed testimony, testifies:

"Question. Is he (George Q. Cannon) a polygamist?—Answer. That is what he is reputed to be, but I don't know.

"Q. How far does that repute go?—A. It is universal in this Territory."

Mr. Mansfield, on page 26, testifies:

"Is George Q. Cannon, Delegate-elect, generally known or reputed to be a polygamist?—A. In all Mormon circles which I have been in he is generally said to have four wives. I came to the Territory in 1862."

James Wood, on page 30, testifies:

"He (George Q. Cannon) is reported to have four wives. This reputation extends throughout the Territory."

Mrs. Pratt, on page 32, testifies:

"Q. Is it a general, accepted, common report throughout the community and neighborhood that George Q. Cannon is living in polygamy?—A. It is generally so understood. I have never heard it disputed in fifteen years. I have often heard him speak of his wives and never heard him deny it."

Dr. George Wenceslaw, who lives at Beaver City, and was a surgeon in Sherman's army in its march to the sea, on page 35, testifies:

"Q. State whether or not it is generally known and understood among the people of that part of the Territory (220 miles west of south of Salt Lake City) that George Q. Cannon, Delegate-elect, is generally reputed to be living in polygamy?—A. It is well known and understood."

Mr. Myers, who was editor and proprietor of the Daily Mining Journal, in Salt Lake City, at the time of the election, on page 36, testifies:

"I spoke of him (Cannon) in the paper frequently as a polygamist. My paper has a general circulation among the people of the city and the surrounding country."

William P. Appleby, register in bankruptcy, and long a resident in Utah, and brought up among the Mormons, on pages 38 and 39, testifies:

"It has been generally understood by the whole community throughout the Territory that George Q. Cannon has been a polygamist, and is now. And I have never heard it denied. And prior and subsequent to his nomination the fact was published in the Salt Lake City Tribune."

Mr. Cunningham, who was brought up in the Mormon Church, on page 40, testifies:

"I have no personal knowledge that Mr. Cannon has even one wife; but I have understood by general reputation that he is a polygamist."

Mr. Morehouse, on page 40, testifies:

"George Q. Cannon is generally reputed to be a polygamist."

Mr. Graves, on page 40, testifies:

"The general report throughout the country is, that George Q. Cannon is a polygamist, and I don't believe he would dare deny it before the people."

Mr. Perris, on page 41, testifies:

"I am one of the editors of the Salt Lake Daily Tribune, and business manager. It is a newspaper of general circulation, taken throughout the Territory. I published the fact that George Q. Cannon was a polygamist previous to the last election, and subsequent to his nomination, and at the time of the nomination. In our judgment we stated that, as a polygamist, he was ineligible. This statement has never been denied by any of the Church organs

or anybody else, so far as I know. He was the editor of the Deseret Evening News, the Mormon-Church organ at that time, and the Deseret News never denied it. I have lived a good while in the Territory, and it is generally known throughout the Territory that he is a polygamist."

Col. J. H. Wickizer, the general postal agent of the United States for Utah Territory, on page 43, testifies:

"It is just as well understood (throughout the Territory) that George Q. Cannon is a polygamist as it is that Brigham Young is the president of the Mormon Church. I have heard him advocate celestial marriage from the pulpit; as I understood thereby, polygamy." (See, also, Mrs. Smith's testimony on page 44.)

George A. Black, secretary of the Territory, on page 45, testifies:

"So far as I have known and heard, he (George Q. Cannon) is generally supposed to have four wives."

Lewis H. Hills, a Mormon of many years' residence in the Territory, on page 69, testifies in behalf of Cannon, on his cross-examination, as follows:

"Q. Is George Q. Cannon, the Delegate-elect, generally understood and reported to be living in what is termed polygamy?—A. He is."

Bishop Hardy, of the Mormon Church, on page 76, testifies, "that polygamy is one of the fundamental doctrines of the church. I have heard him (George Q. Cannon) teach it (polygamy) publicly."

Mr. Handy, an attorney-at-law at Salt Lake City, on pages 9 and 10, testifies that "he (George Q. Cannon) is notoriously reported to have three or four wives living; and, so far as my knowledge goes, the fact of this reputation was known by everybody." When Mr. Cannon was examined in court on his *voir dire*, touching his qualification as a juror, Mr. Handy further testifies that he (Cannon) replied, "that he believed the so-called revelation concerning establishing plural marriage was from God; also, that he believed that a person marrying more than one wife, under that revelation, did not commit adultery. He also stated that he was editor of the Deseret News at that time. This was in open court, in a public manner, and the court-room was crowded with people."

## The following is the testimony of Belle Kimball, the witness above mentioned, taken before the committee, Mr. Cannon being present.

COMMITTEE ON ELECTIONS, WASHINGTON, D. C., *May* 25, 1874.

BELLE KIMBALL, being first duly sworn, was examined as follows:

By Mr. HAZELTON:

Question. Where do you reside?—Answer. In Philadelphia.

Q. How long have you resided there?—A. About two years.

Q. What is your occupation?—A. I am studying in Bryant & Stratton's Commercial College.

Q. Are you acquainted in Utah?—A. I was born there.

Q. Are you acquainted with George Q. Cannon, Delegate from Utah?—A. I am. I have not been in Philadelphia all the time; part of the time I was in Newburgh, N. Y.

Q. It is about two years since you left Utah?—A. Yes, sir.

Q. When did you first know George Q. Cannon?—A. I cannot remember; it was when I was a little girl.

Q. Were you residing in Utah, at Salt Lake, in 1865?—A. I was.

Q. Can you state whether Mr. Cannon was married to his so-called fourth wife in that year?—A. Yes, sir, I learned that he was married in that year.

Q. You remember the occasion when it was said in the community that he was married to his fourth wife?—A. I do, sir; August, 1865.

Q. Do you remember of anything that transpired shortly after his marriage to fix the occasion in your mind?—A. I do, sir.

Q. State what it was.—A. Brigham Young has been in the habit of making trips to various settlements for the purpose of preaching to the people, and in 1865 I accompanied my grandfather on one of those trips.

Q. Who was your grandfather?—A. Heber C. Kimball.

By the CHAIRMAN:

Q. What was he?—A. He was Brigham Young's counselor. We left Salt Lake City in the morning, arriving at Kaysward or Kaysville, I don't know which, about noon, where we were to take dinner. There were prominent members of the church along, invited by Brigham Young.

By Mr. HAZELTON:

Q. About how many in all of both sexes?—A. As near as I can remember, when we started there were about forty persons, equally divided; some gentlemen had two wives,

others had none, and there were some unmarried people along. When we arrived at Kaysward there was dinner prepared in the basement of the meeting-house, and the rooms of the bishop of the place were thrown open to the people. I went to the parlor of the bishop directly after we arrived there. My grandfather was talking with Mrs. George Q. Cannon No. 4, and he said, "My daughter, come to me." I came to him. He always calls me his daughter.

Q. Who?—A. My grandfather. He introduced me as his daughter.

Q. To whom?—A. To Mrs. Cannon. Mr. Cannon was then in the room, but whether he heard the introduction I know not, but afterward I frequently heard and saw Mr. Cannon introduce his wife to friends.

Q. This same person as his wife?—A. This same person as his wife.

Q. During the same trip?—A. During the same trip; we were gone about nine days, and every day during that time I saw him introduce her as his wife, to friends.

By Mr. TODD:

Q. What was her name?—A. It was Eliza; her maiden name I am not familiar with, that being the first time I ever saw her; I heard it frequently spoken of as answering for her bridal trip, though it was a trip for the purpose of preaching to the people.

Q. It was frequently spoken of as her bridal trip?—A. Yes, sir; although it was not.

Q. It was an expedition for preaching?—A. They said it answered for a bridal trip.

Q. State what you remember in regard to the rooms assigned to Mr. and Mrs. Cannon during that expedition; were you frequently in her room during the day-time?—A. I was; the party being large, and the accommodations limited, we were obliged to accommodate each other—the ladies; Mrs. Cannon said that I had liberty to come into her room at any time, and arrange my toilet; I did so much of the time while we were on the trip, and frequently Mr. Cannon came into the room; when he came in, we would withdraw; there were other lady friends of mine as well, that used her room.

Q. Other lady friends who had the same invitation?—A. Yes, sir.

Q. Did you ever visit her rooms during the day?—A. As early as 9 o'clock.

Q. Did the room have the appearance of being occupied; so far as clothing and toilet-articles, &c., were concerned, did it have the appearance of being the room of Mr. and Mrs. Cannon?—A. It did.

Q. And was so understood by the party?—A. It was.

Q. Whenever he would come into the room while you and other lady friends were there under her invitation, what was your habit—to withdraw?—A. It was.

Q. And leave him and Mrs. Cannon in possession of the room?—A. Yes, sir.

Q. This occurred, you are certain, in August, 1865?—A. It did; one reason why I remember it especially is because it was the time I put on my first long dress.

Q. Do you know whether this Mrs. Cannon No. 4 had any children by this marriage?—A. Three years ago—two years ago last November—I called on a lady friend, and there I met Mrs. George Q. Cannon No. 4, and not having met her for some time to speak with her, the lady of the house introduced me to her, and I said I was acquainted with her; I said "I was on your bridal trip; I was with the company." She said, "I remember now;" and she had a little child with her that she addressed several times as "my child." That is all I know concerning her children.

Q. About how old was her child at that time?—A. I should judge it was about three years old; but I could not say.

Q. You think some three years of age?—A. I should think so.

Q. State what else you saw in the room occupied by Mr. and Mrs. Cannon to indicate that it was his room.—A. At that time Mr. Cannon was Mr. Young's secretary, and in Mrs. Cannon's room I saw his papers, and I know them to be his papers, because I have seen him carry them from place to place in a small desk.

Q. And the small desk belonged to him?—A. Yes, sir; I also saw that desk in the room repeatedly.

By Mr. TODD:

Q. Did the party remain at one place, or did they go to several places?—A. They went to several places; we went, I believe, some ninety miles from the city, remaining perhaps one night, and sometimes longer in different places.

By Mr. HAZELTON:

Q. And always, where you went, the same room was assigned to Mr. and Mrs. Cannon; they had a common room?—A. Yes, sir; his first wife was along at the time.

By the CHAIRMAN:

Q. Was along with the party?—A. Was along with the party.

By Mr. HAZELTON:

Q. Did the first wife occupy the bridal room?—A. She did not—not to my knowledge.

*Q. You never saw her in it?*—A. No, sir; never saw her in it.

By Mr. TODD:

Q. What was her name, do you remember?—A. No, sir, I do not; but I believe that it was Hoagland; I am not positive that it was.

By Mr. HAZELTON:

Q. Have you any knowledge about his other wives?—A. I have no acquaintance with his other wives; his wives were all strangers to me up to that time.

(Mr. Hazelton asked Mr. Cannon if he wished to interrogate the witness.)

Mr. CANNON. No, sir.

By the CHAIRMAN:

Q. Do you know whether they were all living at that time?—A. I do not.

By Mr. HAZELTON:

Q. You know his first wife was living at that time?—A. Yes, sir. You may all know that it is very embarrassing for me to appear here to speak against a gentleman whom I have been acquainted with all my life, and whom I have respected, but in duty to myself and in justice to the people of Utah, I am willing to do so. But, as I say, it is very embarrassing for me to do so. If Mr. Cannon objects to anything I have said, or if I have made any misstatements, I shall be pleased to have him correct them.

Mr. Cannon made no response.

Adjourned

The testimony in regard to the oath taken in the Endowment House is conflicting, and such as to leave the committee in doubt whether or not it is irreconcilable with good citizenship and loyalty to the Government of the United States. Some of the witnesses swear that the oath involves a solemn pledge to avenge the death of Joseph Smith upon the Government of the United States, and that sentiments of unrelenting hostility to the United States are taught in the Endowment House; but other witnesses deny these statements in the most positive manner. Several witnesses swear to having seen Mr. George Q. Cannon in the Endowment House, and the fact is not denied by him.

We do not feel called upon to quote the evidence on this subject. It can be found in full in the printed testimony in the contested election case of George R. Maxwell against the said Cannon. (Mis. Doc. No. 49.)

The law of Congress referred to in such preamble may be found in the United States Statutes at Large, volume 12, page 501, the first section of which is as follows:

"That every person having a husband or wife living who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years: *Provided, nevertheless*, That this section shall not extend to any person by reason of any former marriage, whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living, nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court, nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage-contract."

The second section disapproves and annuls all acts and ordinances of the provisional government of Deseret and of the Territory of Utah which establish, support, maintain, shield, or countenance polygamy, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecration, or other contrivances.

This statute was approved on the 1st day of July, 1862, and has since remained the law of the land.

It is proper to add that, after the adoption of the resolution above quoted referring this question to your committee, an act was passed by this House, at the last session, with little or no opposition, which reads as follows:

[43d Congress, 1st session.—H. R. 3679.]

IN THE SENATE OF THE UNITED STATES, JUNE 17, 1874.—READ TWICE AND REFERRED TO THE COMMITTEE ON TERRITORIES.

AN ACT defining the qualifications of Territorial Delegates in the House of Representatives.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, No person hereafter shall be a Delegate in the House of Representatives from any of the Territories of the United States who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the Territory in which he shall be chosen; and no such person who is guilty either of bigamy or of polygamy shall be eligible to a seat as such Delegate.

Passed the House of Representatives June 16, 1874.

Attest: EDWARD McPHERSON, *Clerk.*

Notwithstanding this fact the said Delegate was a candidate at the recent election, and was actually elected Delegate for the same Territory in the Forty-fourth Congress.

Your committee think the evidence, unchallenged as it is by the Delegate, establishes that, at the date of his election, to wit, on the 5th day of August, 1872, and prior thereto, the said Delegate was, and still is, openly living and cohabiting with four women as his wives, under the pretended sanction of a system of polygamy, which system he notoriously indorses and upholds, in violation of the statute of the United States, approved July 1, 1862, above quoted.

They therefore recommend the adoption of the accompanying resolution:

*Resolved*, That George Q. Cannon, Delegate from Utah, being found, upon due consideration of the evidence submitted, and not controverted by said Cannon, to be an actual polygamist, and to have married his fourth wife, having three other wives then living, in the month of August, 1865, in open and notorious violation of the law of July 1, 1862, forbidding such marriage, and declaring the same to be a crime punishable both by fine and imprisonment, and it appearing that he still maintains his polygamous practices in defiance of law, is deemed unworthy to occupy a seat in the House of Representatives as such Delegate, and that he be excluded therefrom.

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## VIEWS OF THE MINORITY.

January 22, 1875.—Mr. Harrison, from the Committee on Elections, submitted the following as the views of the minority:

*The minority of the Committee on Elections, to whom was referred the resolution of the House adopted on the 12th day of May*, 1874, *instructing and authorizing said committee to investigate certain charges recited in the preamble to said resolutions against Hon. George Q. Cannon, the Delegate from the Territory of Utah, and report the result to the House, and directing said committee to recommend such action on the part of the House as should seem meet and proper in the premises, made the following minority report:*

We cannot agree with the majority of the committee in recommending the expulsion of the Delegate from Utah Territory.

While (as we are informed) the Delegate from Utah stated to the

committee that he had no objection to the use by the committee of the testimony taken in the contest before the House, at its last session, between George R. Maxwell and said Cannon, and that he had no desire to submit any testimony or statement to the committee by way of controverting the same, he did not intend to admit the sufficiency of the testimony in said contest bearing on the charges now made against him, but meant simply that he did not desire to take *additional* testimony. He did not mean to admit that the mass of hearsay and irrelevant testimony in said contest should be read against him as legal evidence establishing what is sought to be established in that contest.

The majority of the committee in their report make extracts from the mass of testimony used in the case of Maxwell *vs.* Cannon, and present the statements of sixteen witnesses on "common fame or reputation," as to the fact that Mr. Cannon is a polygamist and living in polygamy, the testimony of four witnesses whose depositions were taken in Utah in January and February, 1873, *without notice*, and the report embraces the testimony of Miss Belle Kimball, taken before the committee, all of which is subject to the objection of being hearsay, irrelevant, and insufficient, and not the best class of testimony the case demanded; but notwithstanding this, the minority of the committee are prepared to admit that it could probably be shown by legal proof that Mr. Cannon is a polygamist, believes in and practices the doctrines of the Mormon Church, and now has four wives, and that he married one of them after the passage of the act of Congress of July 1, 1862. As to the other charges inserted in the preamble to the resolution referred to the committee, that Mr. Cannon had taken and never renounced an oath which is inconsistent with his duties and allegiance to the Government of the United States, the majority of the committee has relieved us from noticing that charge, as they state (page 8) that the testimony in regard to the oath taken in the Endowment House is conflicting, and such as to leave the committee in doubt whether or not it is irreconcilable with good citizenship and loyalty to the government.

Before proceeding to present our views on the question raised by the resolution of expulsion reported by the majority of the committee, we will notice a matter incorporated in the report of the majority, designed, no doubt, to operate as an argument in favor of the expulsion of the Delegate from Utah.

The majority of the committee, page 9 of their report, say:

It is proper to add that, after the adoption of the resolution above quoted referring this question to your committee, an act was passed by this House, at the last session, with little or no opposition, which reads as follows:

"[43d Congress, 1st session.—H. R. 3679.]

"IN THE SENATE OF THE UNITED STATES, JUNE 17, 1874.—READ TWICE AND REFERRED TO THE COMMITTEE ON TERRITORIES.

"AN ACT defining the qualifications of Territorial Delegates in the House of Representatives.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, No person hereafter shall be a Delegate in the House of Representatives from any of the Territories of the United States who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the Territory in which he shall be chosen; and no such person who is guilty either of bigamy or of polygamy shall be eligible to a seat as such Delegate.

"Passed the House of Representatives June 16, 1874.

"Attest:

"EDWARD McPHERSON, *Clerk*."

Notwithstanding this fact the said Delegate was a candidate at the recent election, and was actually elected Delegate for the same Territory in the Forty fourth Congress.

This bill, passed by the House on the 16th June, 1874, has never become a law, but is now pending in the Senate. We presume the majority of the committee do not intend to intimate that the fact that the House passed a bill (not yet a law) providing that no Delegate of a Territory who is guilty either of bigamy or polygamy shall be eligible to a seat as Delegate, justifies Mr. Cannon's expulsion, or prevented him from becoming a candidate for a seat in the 44th Congress, or the people of the Territory of Utah from electing him as their Delegate in the 44th Congress.

If the bill passed by the House at the last session shall become a law during this, the question as to whether Mr. Cannon, who has been elected before the passage of the law, if it shall pass at all, will be eligible to a seat in the next Congress, will be a question exclusively within the jurisdiction of the House of Representatives in the 44th Congress, and will be decided by that House, or the House when the 44th Congress meets.

We come now to consider the question involved in this case.

This is the first instance where it has been sought to expel a Delegate from one of the Territories of the United States, and there is little in the shape of authority to guide us in the examination of the question.

Although there is nothing in the Constitution concerning a Delegate from the Territories of the United States, and no express provision therein for their expulsion as there is in the case of members, we do not doubt the power of the House to expel. The power results simply from the fact that the Delegate is, in some sense, a member, or is one of the body. He is entitled, as well by courtesy as by a custom which has obtained in this country upon the organization of Territorial governments in the Territories, to certain rights and privileges; he is entitled to introduce and advocate on the floor of the House any measure affecting the people of the Territory, or to oppose in debate any measure he may deem injurious to them. He is amenable to the rules of the House or the regulations concerning its proceedings. He would clearly, as it is assumed, have to possess certain qualifications to entitle him to be a Delegate—at least that of citizenship, as is shown in the contest in regard to the admission of the Delegate from Michigan Territory in 1823, during the 18th Congress.

Everything in relation to the position of a Delegate having the rights and privileges we have mentioned, and every relation he bears to the House or to the members thereof, in the absence of anything in the Constitution and laws on the subject, would suggest that if a Delegate is expelled it ought to be for the same causes that would justify the House in expelling a member, and that the power to expel should be exercised as the Constitutional power to expel a member is exercised.

It would seem that all of the reasons that can be urged in favor of the rule which the framers of the Constitution made concerning the expulsion of a member apply with equal force in the case of a Delegate. The framers of that instrument regarded this power to expel a member by a mere majority vote as a dangerous one, and guarded its exercise by providing, in substance, that an expulsion of a member could only be ordered by a two-thirds vote. Of course, we will not be understood as contending that the House has not the power, if it chooses to exercise it, to expel a Delegate by a mere majority vote, or that there is any express provision of law operating as an inhibition on this power. But we submit that this power should be regulated in its exercise by a legal discretion, and that no safer rule can be found than the one which is deduced from the analogy we have mentioned.

If it is true that the power to expel a Delegate is drawn from analogy to the power given in the matter of the expulsion of members, it would seem to follow, that looking to this fact and to the nature of the office of a Territorial Delegate as a representative of a portion of the people of this country, and as, in some sense, a member of this body, he ought not to be expelled except for causes which would justify the House in expelling a member, and by a two-thirds vote on the question.

He certainly ought not to be expelled for political reasons or causes, or on account of the existence of certain practices in the Territory he represents, or to punish him for an alleged indulgence therein, or the people he represents by depriving them of representation.

Mormonism has its seat in Utah. It had when the Territory was organized. For many years the Government of the United States has been compelled to recognize the fact that the people of the Territory of Utah, almost the entire body of them, were Mormons, following the teachings and attached to the doctrines and ordinances of the Mormon Church. The recognized head of the church was for years the governor of the Territory, appointed by the President and confirmed by the Senate. For many years the people of the Territory have had a Delegate on the floor of the House of Representatives, representing them, who was understood to be a Mormon, and in full sympathy with the Mormon Church and its institutions, sacraments, rites, and practices. It is said, but erroneously stated, that when the present Delegate was admitted to his seat at the first session of the present Congress it was the first time that a man practicing polygamy had been seated as a Delegate in this House. This House, however, at the last session, upon very full consideration of the question of his right to be admitted, decided, in effect, that, having been duly elected and returned by the people of Utah, he was *entitled* to a seat as a Delegate in the Forty-third Congress. And it would probably be difficult to discover any really good reason why a gentleman like Mr. Hooper, the late Delegate, who, it was said, had but one wife, but who was a member of the church and subscribed to its doctrines, including that of plural marriages, was any more entitled to retain his seat in the House than the present Delegate, who, it is said, has more than one wife.

After being seated at the last session by the deliberate and well-considered action of this House, mainly, if not wholly, because of the fact that he had received a majority of the votes of the people of Utah, and that they were entitled to a Delegate to speak for them and introduce measures deemed beneficial to that portion of the people of the country, and after having served as a Delegate until within a few weeks of the close of his term, it is now proposed to expel the Delegate from Utah from the House because he is a Mormon, has more than one wife, and married one of them since the passage of the act of July 1, 1862.

Why should he be expelled? If it is replied that it is to strike a blow at Mormonism, we ask, is it proper, is it good policy, to attempt the destruction of Mormonism in this way? Mormonism, as we have said, existed in the Territory of Utah when the Territory was organized, and has existed ever since.

In the act establishing the Territory provision was made for the election of a Delegate, with a full knowledge on the part of Congress and the country that a large majority of the people of Utah were Mormons, and with the further knowledge on the part of Congress and the country that the people of that Territory would be likely to elect a Delegate who was a Mormon.

There have been four Delegates from Utah Territory who have occu-

pied seats on this floor, and all of them have been known to be Mormons, in full sympathy with the teachings and practices of Mormonism, except Judge Kinney.

Hon. Mr. Bernhisel was a Mormon, and during the whole time he was in Congress it was known that he had more than one wife.

Our predecessors occupying seats on the floor of the House of Representatives did not deem it necessary or important to the interest of the country that the Delegate from Utah for the time being should be expelled because he was a Mormon or was attached to the doctrines of Mormonism, or that a blow should be dealt at Mormonism by the expulsion of the Delegate from Utah Territory.

We have said it was clear that neither a member of Congress nor a Territorial Delegate should be expelled for political reasons, and we do not doubt that the recognition of the propriety and force of this position on the subject operated upon the members of the House in former Congresses. Moreover, they must have realized the truth of the proposition which seems plain to us, that the questions growing out of the existence of Mormonism in one of the Territories of the United States, its relation to and effect upon our institutions and theory, and what, if any, measures should be adopted to meet these questions and solve the "Utah problem," were peculiarly within the power and jurisdiction of Congress.

It was clear to them, as it must be to the members of this House, that Congress, with a full knowledge of the existence of Mormonism in Utah, had by law provided that the people of that Territory should be represented on this floor by a Delegate; that the Territory was under the jurisdiction of the United States, except so far as the Territorial legislature of Utah and the local authorities exercised, under the Constitution and laws of the United States, jurisdiction over the affairs of the Territory, and that if additional Congressional legislation was necessary in order to enable the Executive to execute the laws of the United States in that Territory, or enforce any policy which Congress might Constitutionally adopt in regard to the Territory, or any question connected therewith, the power to pass such laws was undoubted, and that these results could be properly attained only by appropriate Congressional legislation.

Congress never deemed it necessary or proper to legislate upon the subject of Mormonism until the year 1862. On the 1st day of July of that year an act was passed declaring "that every person having a husband or wife living who shall marry any other person, whether married or single, in a Territory of the United States, or any other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and upon conviction thereof be punished by a fine not exceeding five hundred dollars and by imprisonment for a term not exceeding five years."

It seems that, in the judgment of Congress, no further legislation was deemed necessary on this subject from the year 1862, and no attempt was made at any legislation on the subject until the last session of the present Congress, when a bill was introduced, hereinbefore referred to, providing that thereafter no Delegate from any of the Territories guilty of bigamy should be entitled to a seat in the House of Representatives, and the bill, known as the Poland bill, passed at last session providing for punishing polygamy in Utah.

Under this last-named act, which is very stringent in its provisions, the policy of the country in the matter of punishing polygamy in the

Territory of Utah is clearly indicated. If it can be effectively punished at all by legislation, and its practice thereby prevented, it will be by legislation of this kind. Under this act, and the proceedings conducted in pursuance of its provisions, all the questions of law and fact arising in any case will be judicially examined and determined according to the law of the case.

Now, it is charged that the Delegate from Utah is guilty of violating the act of Congress of July 1, 1862. He is shown by testimony, which would have been rejected by any court of justice before which he might be tried, of having married a wife (having already three at the time) after the passage of this act.

But he has not been convicted of the offense under that act. This House might expel him, for we admit it has the arbitrary power to do so for this or any other alleged offense. But would it not be safer and more proper to follow the English rule requiring conviction of the crime before a court and jury before it can be assumed that the party is guilty?

We are now, near the close of the Forty-third Congress, trying him for an offense, and have pending before us a resolution for his expulsion for a particular offense, when he has recently been indicted, under the law passed at last session, and is shortly to be tried for that offense before a court and jury.

This will be seen from the following communication, presented by Mr. Cannon to the committee, and read to the committee on the day on which the committee directed the chairman to report a resolution for his expulsion:

HOUSE OF REPRESENTATIVES,
*Washington, D. C., January* 9, 1875.

GENTLEMEN: Having seen by notices in the newspapers that it was the intention to have my case brought at an early day before your committee, with a view to reach a decision respecting the charges which have been made against me, I deem it but justice to you, as well as to myself, to represent to you the following facts:

As you doubtless remember, on the last day of the last session a law was passed by Congress in relation to the execution of the laws in Utah Territory. As soon as possible after its passage, a grand jury was impaneled in the third judicial district of the Territory, and I was selected as the first person in that district to be indicted under the provisions of the new law. There were various reasons, to which I need not here allude, that prompted the district attorney and other officials to thus give me notoriety. I was indicted on a charge of polygamy in the month of October last, and having been arrested by virtue of a warrant issued under the indictment so found against me, I was held to bail for my appearance for trial. In the latter part of November I made application to the court, in which the indictment is pending, for such a change in my recognizance as would enable me to attend the present session of Congress, and appear for trial on the first day of the next March term. But my application was unsuccessful. I was compelled to give bail for my appearance for trial on the first day of the present term of court, which was the first Monday of December, the day on which the present session of Congress commenced. This left me no alternative but to make arrangements for returning to Utah for trial upon receipt of notice by telegraph of the day on which the case may be reached. Since the commencement of the late recess I have daily expected such notice. Upon its receipt my counsel will expect me to start for Utah without delay.

The trial of this indictment will involve an examination by a court and jury of the precise charges which have been preferred against me before this committee, and will no doubt be taken to the Supreme Court of the United States for adjudication of the question involved.

In view of all these facts, it will readily suggest itself to you, gentlemen, that a decision pronounced by you as a committee at the present time, if unfavorable to me, would be the means of doing me a great injury and prejudicing the trial of my case before a court and jury. I feel sure that the House, in adopting the resolution referred to your honorable committee, had no design to persecute me, but to ascertain facts, a knowledge of which is now to be obtained by a judicial investigation. I, therefore, respectfully ask the committee to postpone the consideration of my case until my return from Utah, or until my trial in the district court shall have terminated.

Very respectfully, your obedient servant, GEO. Q. CANNON.

The Honorable COMMITTEE OF ELECTIONS,
*House of Representatives.*

While this proceeding is pending in the courts of Utah, and Mr. Cannon is under bail or recognizance to appear and answer the charge on which it is proposed to expel him from this House, it would, it is suggested, be wrong to find him guilty of the same charge in this proceeding and expel him so near the close of his term, and might subject the majority of the House to the imputation (although groundless) of persecuting one who is understood to be politically opposed to the party of the majority in the House.

But a graver question than those we have considered is the question whether the House ought, as a matter of policy or to establish a precedent, expel either a delegate or member on account of alleged crimes or immoral practices unconnected with their duties or obligations as members or delegates, when the delegate or member possesses all the qualifications to entitle him to his seat.

If we are to go into the question of the moral fitness of a member to occupy a seat in the House, where will the inquiry stop? What standard shall we fix in determining what is and what is not sufficient cause for exclusion?

If a number of members engage in the practice of gaming for money or other valuable thing, or are accused of violating the marital vow by intimate association with four women, three of whom are not lawful wives, or are charged with any other offense, and a majority of the House or even two-thirds expel them, it may be the recognition of a dangerous power and policy. If exercised and adopted by one political party to accomplish partisan ends, it furnishes a precedent which it will be insisted justifies similar action by the opposite party when they have a majority or a two-thirds majority in the House, and thus the people are deprived of representation and their Representatives possessing the necessary qualifications are expelled for causes outside of the constitutional qualifications of members, or those which a Delegate must possess, so far as his qualifications are fixed by reason or analogy, or are drawn from the principles of our representative system of government.

We need not, we think, illustrate further the danger or impolicy of expulsions and depriving the people of representation in the House on account of charges against members or delegates, which involve either political considerations or immoral practices, especially as the precedent once established by the House may be held to justify the House in exercising great latitude in judging of moral and political offenses as grounds for expulsion.

We conclude this report by referring to and inserting an extract from the report in the case of Maxwell *vs.* Cannon, at the last session, showing how careful the House has been in the exercise of this power:

Under this power, guarded as it has been by the constitutional provision requiring a vote of two-thirds, there have been but a very few instances of expulsion since the organization of the government, and it would seem that a power so rarely exercised does not require the agency of a standing committee.

The cases involving its exercise have usually been referred to select committees.

The case of Benjamin G. Harris, of Maryland, in the Thirty-ninth Congress, may be cited to show that the House has not been inclined, even in so strong a case as that was, to regard a member duly elected by the people of his district as disqualified under the circumstances, even under proceedings looking to his expulsion.

Mr. Harris was a Representative in the Thirty-ninth Congress, his term commencing on the 4th of March, 1865.

On the 2d of May, 1865, he was arraigned before a military commission, and convicted of violating the 56th Article of War, by harboring and protecting rebel soldiers, furnishing them with money, inciting them to continue in the rebel army and to make war on the United States, declaring his sympathy with the enemy and his opposition to the Government of the United States.

On the 12th of May, 1865, he was found guilty, and sentenced as follows:

"And the court do therefore sentence the accused, Benjamin G. Harris, as follows: To be forever disqualified from holding any office or place of honor, trust, or profit under the United States, and to be imprisoned for three years in the penitentiary at Albany, New York, or at such other penitentiary as the Secretary of War may designate."

On the 31st day of May, 1865, this sentence was approved and confirmed, and also remitted by President Johnson, and Mr. Harris was released from imprisonment. At the commencement of the session, in December, 1865, Mr. Harris, upon taking the iron-clad oath, was admitted to his seat in the House of Representatives.

On the 19th of December, 1865, a resolution reciting the fact of his conviction, and the fact that he expressed his regret that the assassination of President Lincoln came too late to be of any use to the rebels, and referring the matter to the Committee on Elections, with directions to inquire into the facts of the case, and to report such action as the committee should recommend, was adopted.

The committee never made any report, and the House never took any further action in the case.

On the 15th of May, 1856, Mr. Knowlton introduced a resolution referring to the homicide of Thomas Keating, at Willard's Hotel, on the 8th of the same month, by Mr. Herbert, a Representative from the State of California, and instructing the Committee on the Judiciary to take the case into consideration, with power to send for persons and papers, and to report what action the House should take in the premises.

The House refused to entertain the proposition. This all occurred at the first session of the Thirty-fourth Congress. At the third session a petition was sent to the House signed by 2,232 citizens of California, declaring their belief that, in the murder of Keating, Mr. Herbert had committed an act entirely without justification, had disgraced his high position, and that he could no longer satisfactorily represent the will of his constituents in the House of Representatives, and asking that, in the event of his acquittal by the court, he should be expelled from the House. This petition was referred to the Committee on Elections. On the 24th day of February, 1857, Mr. Colfax submitted the report of the committee. The committee, without making any recommendation, concluded their report in these words:

"Your committee, therefore, report the character of the petition, the statements embodied in it, and the number of its signers, that the House may determine what action under the circumstances they may deem just to all concerned."

The House took no action whatever in the case, and Mr. Herbert continued to be a member of the House until the expiration of the Thirty-fourth Congress. He voted at the very last call of the yeas and nays on the 3d day of March, 1857.

The minority of the committee recommend the adoption of the following resolution as a substitute for the resolution reported by the majority:

*Resolved*, That the Committee on Elections be discharged from the further consideration of the resolution referred to it by the House in the case of George Q. Cannon, the Delegate from the Territory of Utah.

HORACE H. HARRISON.

Without indorsing the reasoning and positions taken in this report, which we have not had time to examine, we concur in recommending the adoption of the resolution that the committee be discharged from the further consideration of the charges against the Delegate from Utah.

C. R. THOMAS.
L. Q. C. LAMAR.
EDWARD CROSSLAND.
R. M. SPEER.

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## ELECTION OF PRESIDENT AND VICE-PRESIDENT.

January 26, 1875.—Mr. Harrison, from the Committee on Elections, submitted the following report:

The Committee on Elections were instructed, by order of the House, on the 11th December, 1873, "to examine and report upon the best and most practicable mode of electing the President and Vice-President, and providing a tribunal to adjust and decide all contested questions therewith." On the 22d of June, 1874, the committee, by its chairman, Mr.

H. Boardman Smith, reported and recommended the adoption of the following joint resolution, proposing an amendment of the Constitution of the United States in respect of the election of President and Vice-President, which was recommitted to the committee, viz:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein)*, That the following article is hereby proposed as an amendment to the Constitution of the United States, and, when ratified by the legislatures of three-fourths of the several States, shall be valid, to all intents and purposes, as a part of the Constitution, to wit:

ARTICLE —.

SECTION 1. The President and Vice-President shall be elected by the direct vote of the people, in the manner following: Each State shall be divided into districts, equal in number to the number of Representatives to which the State may be entitled in the Congress, to be composed of contiguous territory, and to be as nearly equal in population as may be; and the person having the highest number of votes in each district for President shall receive the vote of that district, which shall count one Presidential vote; but no voter in any State shall vote for candidates for President and Vice-President who are both citizens in the same State with himself.

SEC. 2. The person having the highest number of votes for President in a State shall receive two Presidential votes from the State at large.

SEC. 3. The person having the highest number of Presidential votes in the United States shall be President.

SEC. 4. If two persons have the same number of votes in any State, it being the highest number, they shall receive each one Presidential vote from the State at large; and if more than two persons shall have each the same number of votes in any State, it being the highest number, no Presidential vote shall be counted from the State at large. If more persons than one shall have the same number of votes, it being the highest number in any district, no Presidential vote shall be counted from that district.

SEC. 5. The foregoing provisions shall apply to the election of Vice-President.

SEC. 6. The Congress shall have power to provide for holding and conducting the elections of President and Vice-President. The returns of such elections shall be made to the Supreme Court of the United States within thirty days after the election. Said court shall, under such rules as may be prescribed by law, or by the court in the absence of law, determine any contest in respect of such returns, canvass the same, and declare, within ninety days after such election, by public proclamation, who is elected President and who is elected Vice-President.

SEC. 7. The States shall be divided into districts by the legislatures thereof, but the Congress may at any time by law make or alter the same.

SEC. 8. No person who has been a justice of the Supreme Court shall be eligible to the office of President or Vice-President.

We have given these proposed amendments that careful and laborious examination which is demanded by the gravity and importance of the questions involved.

We present to the House some considerations in opposition to the existing provisions of the Constitution upon the subject, drawn from the history and the practical workings thereof, and the views that have occurred to us, favoring an amendment to the Constitution, looking to what we regard as an improvement on the present plan, and as avoiding the dangers which are imminent and certain if the existing mode of electing the President and Vice-President and counting the vote is continued.

The following are the existing provisions: Art. II, sec. 2, and Amendments, Art. XII of the Constitution:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. (Art. II, sec. 2.)

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all per-

sons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for this purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. (Amendments, Art. XII.)

The convention which framed the Constitution evidently held the opinion that the people could not be safely trusted with the election of the President and Vice-President. On the question of an election by the people instead of by the national legislature, the proposition received the vote of only one State—that of Pennsylvania.

The proposition that the Executive should be chosen by electors appointed by the State legislatures was voted down, and that of choosing the Executive by the national legislature was at first unanimously adopted, but the vote was afterward reconsidered and the convention decided—

1. That the National Executive should be appointed by electors.
2. That the electors should be chosen by the State legislatures.

Afterwards it was voted (seven States voting in the affirmative and three in the negative) that the President should be appointed by Congress.

Subsequently, upon taking up the report of the committee of eleven, in which was presented the draught of a plan for appointing electors by each State, and for electing and counting the votes for candidates for President and Vice-President (which plan embraced a provision for an election by the Senate, in case there should be more than one candidate having the votes of a majority of the electors, or in case none of them have a majority), seven of the States voted to retain this last-named provision in the plan, and three voted against it and in favor of an election, in either of the contingencies mentioned, by the Congress, instead of by the Senate.

Finally, the clause in the report providing for the appointment of electors by each State was adopted by the convention—New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and Georgia voting in the affirmative, and North and South Carolina in the negative—and the existing provision for an eventual election by the House of Representatives was adopted by a vote of seven States in the affirmative and three in the negative.

The question as to the mode of selecting the Executive, according to the admissions of the ablest members of the convention, was an exceedingly perplexing and difficult one.

The theory upon which the existing provision was adopted was evidently that a body of men—electors appointed by each State, acting separately in each State—distinguished for their ability and wisdom,

and uninfluenced by popular passion, should be left free to exercise their judgment in making the selection. The manner of the appointment of the electors was left entirely to the legislatures of the States. The State legislatures, under the existing provisions of the Constitution, may appoint the electors, or may provide for their selection otherwise, and it is a noticeable fact that there is nothing to be found anywhere in the debates of the convention of 1787 which warrants the assumption that the convention intended or expected that the State legislatures would provide for the selection of electors by a popular vote.

To secure the complete independence of the electors, it was provided that they should vote by ballot.

The idea of interposing an electoral college between the people and the election of a President by the people was adopted upon the theory that the people could not be as safely trusted to select the Executive by a direct popular vote as a select body of men chosen as the State legislatures might direct.

The convention dreaded the effects of popular passion and prejudice and tumult, in the important matter of the selection of a Chief Magistrate, if the people, assembled at the polls, should vote directly for their choice for President, and assumed that small bodies were less easily corrupted than large ones.

It is not surprising that the framers of the Constitution, who had not seen the theory of a democratic government in this country tested, and who were surrounded by peculiar circumstances in the performance of their work of inaugurating the *experiment* of providing for the organization of the government and the distribution of its powers, should hesitate to provide for electing the Executive by a direct popular vote. Mr. Madison and Mr. Gouverneur Morris preferred this plan to an election by the national legislature; but the electoral system, as provided for, was a compromise between those who favored an election by Congress and those who opposed that mode of selecting the Chief Magistrate of the nation.

The convention chose as the safer experiment the plan of having electoral colleges in each State to vote for the President, notwithstanding the plan was based on a distrust of the people, and had its origin in aristocratic forms of government, in which the nobility or select bodies elected the sovereign or chief magistrate.

All that was said in the debates on this subject, when the question of the mode of selecting the Executive was before the convention, in regard to the danger there would be of "cabal and intrigue," if the election was with the legislature, applies in some degree to the plan adopted, especially if the electoral colleges were to exercise their own judgment in the selection of the President, uncontrolled by any precedent action by the people indicating their choice. In one respect, at least, the theory of the existing plan has not been carried out in practice. The electors, according to the original theory, were to be independent of pledges to vote for any particular person, so that when they met they could deliberate with freedom and act for the best interest of the republic. In point of fact, in most instances, they have been nominated by conventions of political parties, have accepted the nomination, and been voted for, upon an implied pledge to vote for particular persons for President and Vice-President. These implied pledges public opinion has made binding. There has been no instance of a violation of these pledges in three-quarters of a century.

It is fortunate that this theory of electors voting for *their* choice, without regard to the action of the people, has not been carried out in prac-

tice; for small bodies of men intrusted with such a vast power as that of selecting a President of the United States, with such immense patronage as flows from him, it is evident may be reached by the arts of corruption and intrigue, while the great body of the people cannot be so easily reached, if they could be corrupted at all. The patronage at the disposal of the President is sufficient, if it could have the effect, to corrupt every elector, but it could not reach the whole body of the American people.

While, however, it is fortunate that the theory of the independence of the electors in the matter of voting—unrestricted and uninfluenced by pledges—has not been carried out in practice, this pledge in advance defeats one of the main objects, if not *the* main object, to secure which the plan of an electoral college was adopted, for in practice the electors are converted into agents to carry out instructions given them before their selection. The electoral colleges, or the system, have proven to be useless. While the system has proven to be useless, it may be potent for evil. The system has not only proven to be useless, but it is not in harmony with the American theory announced by Mr. Madison that "it is indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them."

Ours being a government *of* the people, *for* the people, and *by* the people, each voter, entitled to have his voice heard in the selection of the highest as well as the lowest elective officer in the country, should be permitted to vote directly for the men of his choice for President and Vice-President. But under the electoral-college system a very large number of voters have been deprived of the privilege of voting for their choice for President and Vice-President, and are thus practically disfranchised.

In 1860, in most of the States in the southern section of the country, electors who were pledged to vote for Mr. Bell, Mr. Breckinridge, and Mr. Douglas were nominated and voted for, but no voter in that large section could have his vote for Mr. Lincoln counted, however anxious he may have been to vote for him, because no convention or party had nominated electors on the Republican ticket. And such was the case with persons desiring to vote for Mr. Douglas in States where no Douglas ticket had been nominated.

The present system makes the convention or caucus system indispensable, for the individual voter cannot give effect to his vote unless there are others in the particular State or locality who will meet and nominate an electoral ticket for which he can vote.

The election of a President and Vice-President under the present system is an election by the States. Under the present apportionment, the electoral votes of ten or less than one-third of the States may decide the result.

A candidate voted for for President may carry enough States to give him a majority of the electoral votes by an aggregate majority not exceeding 50,000 votes of the popular vote, *thus securing his election*, while his competitor may carry all the remaining States by majorities amounting in the aggregate to a half a million majority of the popular vote over the successful candidate.

The vote of each State being cast or counted solidly, it is the same in effect as if the people of the States, giving in the aggregate a majority of the electoral votes, had voted unanimously for the same man, which is never the case.

There is a state of things existing in this country at present very

different from that which existed in it when the mode of electing a President and Vice-President was discussed in the convention of 1787. Then the population of the whole country was little more than the present population of some of the States of the Union. Then there was danger, as stated by Mr. Williamson, of North Carolina, that in case of an election by the people, as the people would, as he assumed, be sure to vote for some man in their own State, that the largest State would be sure to succeed, except in the case of the slave States, the slaves having no suffrage.

But now, with a population of forty millions of people, and the objection to a direct vote by the people, so far as it formerly affected the then slave States, removed, we may now, aided by an experience of 87 years, look at the question divested of this objection to an election of a President and Vice-President by a direct vote of the people.

There is an inherent injustice and unfairness in the present plan.

It had its origin in the idea of preserving the equality of the States in the selection of a Chief Magistrate and of protecting the smaller States in their rights. But how has the plan worked in this regard? A familiar and forcible illustration of the truth of the proposition that, instead of preserving and securing an equality of influence among the States, so far as the smaller States are concerned, the elections may be controlled by some one of the larger States, is found in the case of the election for President in 1844, when the small vote of 5,000 given in New York to Mr. Birney resulted in giving the whole electoral vote of that State to Mr. Polk, and elected him over Mr. Clay.

It would seem that there was an intrinsic injustice in requiring the vote of a State to be cast solidly, as it must be under the existing provisions of the Constitution. In New York, for instance, one person voted for for President may have a majority of only a few votes over another person voted for, which small vote carries with it the entire electoral vote of the State, and this small majority in effect silences the voice and suppresses the wishes of nearly half of the qualified voters of that State.

It is evident that the power of the States, as such, in controlling the election of President which they now possess, is secured to them in the practical working of the present system, by the electors being pledged in advance to vote for a particular person, and by the vote being cast *in solido*. And it is also evident that the influence of the States in the Presidential elections thus secured and exercised, is secured at the expense of a principle of fair representation.

While the doctrine of State sovereignty has generally been insisted upon as a protection of the smaller States, this particular feature of it has been preserved and strengthened at the expense of the smaller States. The electors were at first generally chosen by districts, in States that did not choose them by their legislatures; but this practice was broken up by two of the larger States of the Union, because it tended to destroy their power in the Presidential elections. The votes of these States being cast as a unit, or solidly, they were of greater consideration or weight in determining the result than under a system which might divide them up among the contending candidates.

The result in New York and Pennsylvania, for instance, is looked to with the greatest anxiety, as likely to determine the election, because the electoral vote of these States amounts to more than one-fifth of the whole electoral vote to be cast for President, and may control the result; whereas, if the votes of these States could be divided up, and counted

upon the plan in the amendments we are now considering, the case would be quite different.

We have presented facts and considerations going to show the unfairness of the present system or plan of electing a President and Vice-President, its injustice, and the objections to the present mode growing out of the fact the provision for the appointment of electors, and the incidents of the electoral system, may defeat the popular will.

We now come to consider a defect in the present plan of electing a President and Vice-President which may result in the most serious consequences if the defect is not soon remedied.

There is no tribunal by which, or law under which, contests growing out of these elections can be decided.

The Constitution provides that "each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress." Thus the mode of choosing the electors is placed entirely beyond the power and jurisdiction of the national government; and whatever disorders, irregularities, or failures in the appointment or selection of electors in any of the States may occur, they are entirely without remedy or redress by the government.

All of the States *now*, by the enactment of their legislatures, provide that the electors shall be chosen at large by the qualified voters of the State, but in none of them is there any provision of law for the settlement of any contest that may arise out of such election. We are not justified in supposing that the Presidential elections in the future will be free from fraud, or that the will of the people may not be defeated by violence, disorder, or fraud at the polls, or in the action of supervising and returning boards.

To say the least of this matter, it is evidently the part of wisdom and sound statesmanship to guard against such a possible if not a probable contingency, in a matter threatening so much of danger to the peace if not to the existence of the Union.

It is believed that every State in the Union provides by law for settling contests in the elections for governor and other State officers, but no provision is made for contesting the election of electors, and the returns, it is claimed, must stand and be counted in the presence of the Senate and House, if sent forward in the time and in the manner directed in the Constitution.

Besides the omission to provide for settling contests, in the election of electors, if any, in the States, it is claimed that there is no provision under which the two houses of Congress can make any determination of any question which may arise upon opening the certificates and counting the votes.

The Constitution provides that the President of the Senate shall be the depositary of the electoral votes, and that he "shall in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."

Under this provision it is claimed that the two houses of Congress are mere witnesses of the counting of the votes, and that they are to be present in their separate characters, and not as a joint convention, possessing any power to do more than to simply witness the counting of the votes.

It seems to have been understood that neither house, in its separate character, or both as a joint convention, could do more than be present and witness the performance of a duty enjoined by the Constitution on the President of the Senate, and the counting of the votes; and this

seems also never to have been questioned until the year 1857, when objection was made to the counting of the vote of Wisconsin, because the electors in that State had failed to meet and cast their votes on the day prescribed by law. The objection had much weight in it, for the Constitution provides that the electors shall meet and vote on the same day in all the States, and Congress had provided, a few years after the Constitution was formed (in 1792), that the electors should meet in each State and cast their votes on the first Wednesday in December, and that they should be chosen within thirty-four days of that time.

The President of the Senate, however, decided that the objection was not in order, and that nothing was in order but to receive and count the votes. The vote was counted, and Mr. Buchanan was declared elected. A motion was made to correct the count and exclude the vote of Wisconsin, which the President of the Senate decided was out of order, and after the count he declared the meeting dissolved.

Upon the retirement of the Senate, debates ensued on the question, in both houses, and these debates show that the better opinion was that the two houses had no jurisdiction over the matter of counting the electoral votes either jointly or separately, as the Constitution had failed to provide such jurisdiction as to any question which might arise on the occasion of counting the vote, and that the two houses were to be present simply as witnesses of the accuracy and result of the count.

It happened that the vote of Wisconsin was not decisive of the result. But suppose it had been, and by counting it for Fremont and Dayton they would have been elected, or by rejecting it Mr. Buchanan and Mr. Breckinridge would have been elected, Mr. Mason, the President of the Senate, having the decision of the question in his own hands, what would have been the result? How dangerous the exercise of such a power as that vested in such a case in the President of the Senate! Is it too much to assume that the danger of civil war or revolution would have been imminent?

Nor would the danger have been less imminent if the objection made to the counting of the vote of Wisconsin had been entertained and allowed, and the decision of it referred to the concurrent action of the two houses, taken separately, as now provided by what is known as the 22d joint rule, adopted in 1865. The Senate was then strongly Democratic and the House Republican. The two houses would most likely have failed to agree, and we can imagine the serious and dangerous complications which might have resulted, and to what extent the peace of the country might have been endangered.

If the two houses are to be present on the occasion of counting the votes merely as witnesses, and the President of the Senate has power to open the certificates and prevent the action, or any action, by the convention of the two houses, and, upon the announcement of the vote by tellers, declare the result, the power is a dangerous one to be lodged in any one man, attached, as he may be, to the fortunes of a political party or personally interested in the result of his own decision.

And the latter hypothesis is not a mere theoretical or fanciful speculation as to a simply possible contingency. It has occurred six times in the history of Presidential elections that the President of the Senate has been directly and personally interested in the result he announced. Mr. Adams, in 1797, declared himself elected President. Mr. Jefferson, in 1801, when he and Colonel Burr were candidates for President, announced the result. Vice-President Tompkins opened the certificates and the vote was counted when he was a candidate for re-election. In 1837, Vice-*President* Van Buren did the same thing, and declared himself elected

President. In 1841, Richard M. Johnson announced the vote for himself and that for Mr. Tyler, the opposing candidate; and in 1861, Mr. Breckinridge, then President of the Senate, announced the result when he himself was a candidate for the Presidency.

It was the duty of these distinguished men to do just what they did—a duty enjoined on them by the express provision of the Constitution; but the danger of continuing that provision which vests the power given the President of the Senate in any one man, and particularly when he may have a personal interest in the result of his action or be influenced by the demands of his party upon him, is not lessened by the fact that such men as Adams and Jefferson, Tompkins, Van Buren, Johnson, and Breckinridge may have acted with perfect fairness in the transaction.

It will be noticed by those who take occasion to examine the very interesting debate which took place in February, 1857, when it was moved to reject the vote of Wisconsin, that protests were vigorously made against the action of the President of the Senate on that occasion, and the proposition that the two houses were simply present under the Constitution as mere witnesses of the counting of the vote was earnestly combated.

The question was not settled, and could not very well have been settled.

But even if the theory contended for on that occasion by those who assumed that the two houses had a right to act on the question made as to the vote of Wisconsin, and either receive or reject the vote, was adopted as the true one, the difficulties and dangers growing out of the question, by reason of the fact that the Constitution fails to provide how questions of the kind arising when the vote for President and Vice-President is counted, still remain.

If the President of the Senate in such a case has the power which it is claimed by some he possesses, there is danger. If the two houses present at the opening of the certificates and counting of the vote have jurisdiction to determine any question which may arise affecting the vote of any State, there is danger; and with the doubt existing as to whether the power to decide these questions resides in the two houses, or can be determined by the two houses acting in convention or by their acting separately, and also as to how they shall act, whether by States or by a different method, there is danger; and it must be apparent that when the action of the President of the two houses is had in any case where that action decides the result of a Presidential election while the doubt we have mentioned exists, the worst possible consequences are likely to follow.

It will not remove this danger to say that the framers of the Constitution never intended that the President of the Senate should ever exercise any judicial power in determining or ruling upon the vote as between two sets of electors, or upon the sufficiency or validity of the certificates, or the votes of the electors in any State; for we have seen, in practice, that the exercise of these high powers may devolve upon that officer *ex necessitate rei*, and that his decision, although it may decide the result in a doubtful case, is final, unless the twenty-second joint rule remedies the omission or defect in the Constitution.

The action of the two houses under this rule in a doubtful case or on a doubtful question, particularly when party spirit was bitter or party excitement high, would not give satisfaction to the country or be regarded as a final settlement of the result, especially as it would be difficult, if not impossible, to find a warrant in the Constitution for the power assumed by Congress to adopt this rule, which virtually makes

Congress the judge of the result of the election for President and Vice-President. Even admitting, for the sake of argument, that Congress had the power to adopt the rule, it is both unreasonable and dangerous, because it may make the right of the people of a State to participate in a Presidential election to depend upon the concurrent action of the two houses of Congress in the manner as directed in the rule. It will be noticed that the provision of this rule is *not* that the vote shall be counted unless the two houses concur in its rejection, but it is provided by the rule that "*no vote objected to shall be counted except by the concurrent votes of the two houses.*"

The presumptions of law are in favor of the fairness and legality of the vote offered to be counted; and yet, with these presumptions, Congress has undertaken, by this twenty second joint rule, to say that if objected to the vote shall not be counted unless both Houses vote to receive it. Under this rule, the objection to the vote being counted is virtually assumed to be valid and conclusive unless overcome affirmatively by the vote of both houses, thus placing it in the power of one house to reject the vote of a State. The rule invites captious objections to the votes offered to be counted, and places it in the power of a defeated political party having a majority in either house to defeat an election by the people. It is a powerful temptation, which a defeated party may not resist. If objection to the vote of a State is made and the houses disagree, the vote of the State is lost. This may result in a tie vote or in the election of a candidate who, if the vote thus rejected was counted, would be defeated, or in preventing either of the candidates from having a majority of the votes, and thus throwing the election into the House of Representatives.

It must be apparent that the claim supported by the twenty-second joint rule, that Congress has power to admit or reject the electoral vote of the States, subverts the whole theory upon which the existing constitutional provision in relation to the appointment of electors is based; and it is equally plain that if Congress had this power, its exercise would conflict directly with the known purpose of the framers of the Constitution to preserve the independence of the executive and the legislative department each of the other. When the electors meet on the first Wednesday in December, their office is fully performed, and there is no authority given in the Constitution or in any law under which the college could ever again meet for any purpose. No tribunal has been provided to inquire into the rightfulness or regularity of the selection of electors and set aside their votes, nor did the framers of the Constitution anticipate the possibility of a contest between two sets of electors, or of irregularities or frauds in the choice of electors, which would warrant the rejection of their votes.

But by requiring that the electors should meet in each State on the same day, and make a list of the persons voted for for President and Vice-President, which they shall sign and certify and transmit *sealed* to the seat of government, directed to the President of the Senate, the framers of the Constitution evidently intended that no tribunal should inquire into the rightfulness or regularity of their election and set aside their votes; and there was not only no opportunity for a contest as to their election or as to the action of the electors in casting their votes, but it was made impossible that Congress should pass upon these questions, as the electoral colleges in each State, when they had cast their votes on a particular day, on that day became *functus officio*, and the votes then cast, sealed, and sent to the President of the Senate were

not to be opened except in the presence of the two houses, and were to be counted on the occasion of their being opened.

If this provision of the Constitution is complied with according to the letter of the provision, there could be no contest in relation to the vote; and it must be counted if it appear that the vote was cast as required by the Constitution, and certified in due form as required by law, and this without regard to notorious frauds in the selection of electors.

From what has been said, it is easy to perceive that with no provision for a tribunal to decide contests in relation to the election of President and Vice-President, and the possible, if not the probable, assumption by the two houses of Congress of the right to decide questions which may arise on the occasion of counting the electoral votes, especially under the twenty-second joint rule, the danger of having the election thrown into the House of Representatives is largely enhanced. That this result is to be deprecated, and if possible prevented, by the adoption of a different mode of determining the question of who is elected President and Vice President, we take it for granted will be conceded. Certainly it will be conceded by all who desire that the voice of the people shall be heard on the important question of the selection of the chief executive officer of the nation.

Under the provision of the Constitution for an election by the House of Representatives, the representation from each State is entitled to only one vote, without regard to the vast difference in population of the different States as compared with each other, and it must be without regard to the principle upon which all our ideas of popular representation in this country are based.

In the next place, such an election, particularly in cases where it may be regarded as defeating the popular will, is fraught with danger to the peace of the country. The elections in 1801 and 1825 need only be mentioned as suggestive arguments in support of the proposition that an election by the House of Representatives may be a dangerous proceeding. The throwing of the election into the House furnishes great opportunities for bargain, intrigue, and corruption.

No one, it is assumed, would desire to see a repetition of the action of the House in 1825, when the candidate defeated in the House had received a large proportional majority of the popular vote, and had received a large *plurality* of the electoral votes.

A repetition thereof, under certain conditions of public sentiment, and with party excitement at fever-heat, might lead to the most deplorable results.

Moreover, when it is considered that one of the objects in having an election for President every four years is that the public sentiment of the country may be expressed in the selection of a chief magistrate who is to represent that sentiment and carry it into effect so far as he can constitutionally, it is manifestly wrong that members of the House elected nearly two years before the election of a President, and whose political sentiments and policy may have been repudiated by the people in the Presidential election, should elect the President, and thus defeat the more recently expressed popular will.

To remedy the evils, omissions, and injustice, and to guard as far as possible against the dangerous tendencies and incidents of the present mode of electing a President and Vice-President and determining the result, we recommend the adoption of the amendments now reported back to the House.

This proposition involves a radical change in the mode of election,

and dispenses entirely with what we have sought to show was the use less machinery of Presidential electors and electoral colleges.

FIRST.

The amendments proposed secure the election of President and Vice-President by a direct vote of the people, so that the voice of each citizen of the country entitled to vote shall be heard and have its weight in determining who shall fill these high positions. We do not consider it necessary to elaborate what we have hereinbefore said in favor of this portion of the proposed amendments. The proposition is in harmony with what has become a fundamental principle in our theory of government, and that is, that this being a government of the people, every citizen should have a voice in selecting the magistrates who are to execute the laws, and that the people must be, and are entitled to be, trusted in the decision of any and every question affecting their interest, safety, and welfare. The people voting directly for President and Vice-President, the danger of cabal, intrigue, and corruption, which may be brought about by the use of Executive patronage and influence, and which might tempt electors and electoral colleges, will no longer exist unless a majority of the whole people could thus be corrupted or influenced, which is improbable, if not impossible.

And, lastly, the proposed amendment in this respect secures the adoption of the only mode by which the will of the people can be effectually and certainly carried into effect in the important matter of the selection of President and Vice-President.

SECOND.

The proposition embraced in the amendments looks to a vote of the people by districts equal in number to the Representatives to which the State may be entitled in the Congress, to be composed of contiguous territory, and to be as nearly equal in population as may be. The argument in favor of this plan has been already partially presented. It has been seen that, with the vote of each State for Presidential electors cast *in solido*, the popular will has been sometimes defeated. A very small majority in a State carries the whole electoral vote of that State, as in the case of New York in 1844, hereinbefore mentioned, and that this occurring in, say, one-fifth of the States will elect, notwithstanding there may be in the other States a large popular majority given for the unsuccessful candidate. If, under the amendment proposed, the person having the highest number of votes in each of said districts is entitled to the vote of the district, counting one Presidential vote for the person obtaining a majority in the particular district, no such result as that of defeating the popular will can occur.

Under the amendment, the person receiving the highest number of votes *in a State*, it is true, would receive or be entitled to two Presidential votes for the State at large, and this is proposed as a just concession to the autonomy of the States as such, which has found its sanction in the almost universal recognition by the people, ever since the formation of the government, of the wisdom of the framers of our Constitution, in providing that the Senate shall be composed of two Senators from each of the States of the Union. It is also true that under the proposed amendment, if two persons have the same number of votes *in any State*, it being the highest number, they shall receive each one *Presidential vote* from the *State at large*, and that if more than two per-

sons shall have each the same number of votes in any State, it being the highest number, no Presidential vote shall be counted. And there can possibly be no valid objection to either of these provisions; for, if the vote in any State between two candidates receiving the highest number of votes in that State is divided between them, no principle of fairness and none of the rights of the State are violated by giving the State (so to speak) the benefit of two votes in the count or one vote each to the two candidates; and if more than two candidates each have the same number of votes in a State, being the highest number of votes, it would be simply impossible to divide the two Presidential votes for the State at large between the three candidates without giving to each candidate a fraction of a vote.

But notwithstanding these provisions are made in the amendments for securing to each State, or to the candidates having the highest number of votes in the State, two votes for the State at large, yet the important feature or element in the plan proposed is that under it there is to be a vote of the people by districts, which will tend to prevent a defeat of the will of the people, and will have a powerful tendency to prevent frauds in the election.

Under the present system, the States voting solidly, many inducements to fraud exist. Parties are frequently nearly balanced in a State, and fraud in our large cities or in a particular locality may control the electoral vote of an entire State; whereas, under the district system, as we will term it, the frauds in our large cities would only affect the vote in the district in which they occurred. The risk and expense will not be incurred to carry the vote of a single district that would be incurred if the result of the fraud was to determine the vote of the whole State, and perhaps secure the election of a President.

THIRD.

The amendment provides that Congress shall have power to provide for conducting the elections of President and Vice-President; and provides, also, that the States shall be divided into districts by the legislatures thereof, but that Congress may, at any time, by law, make or alter the same. This proposition is based upon the theory that there should be some uniform Constitutional rule upon this subject. The election of a President and Vice-President is a national affair. The whole people of the United States have a deep and direct interest in the result of such an election, and an interest, therefore, not only in the fact that an election shall be held, but in the manner of holding it. And the Congress of the United States, the representative of the people and of the States, the department of the government in which all national legislative power under the Constitution resides, is the only power which can appropriately and efficiently control in this matter, so vitally important to the interests of the entire people.

The power to appoint electors being conferred by the Constitution of the United States on the State legislatures, it cannot be taken from them or modified by their State constitutions.

In the early Presidential elections, the electors were chosen in many States by the legislatures without the question of the selection of the electors being voted on by the people; and this was done by Delaware, Georgia, Louisiana, New York, and Vermont down to the year 1824, and by South Carolina down to the late war.

No one doubts that under the Constitution, as it now stands, the legislatures can, at any time, repeal all laws providing for the election of

electors by the people. The very fact that it is in the power of the legislatures of the various States, under the present system, to adopt different modes of choosing electors, is suggestive of the necessity of establishing a uniform system or a uniform Constitutional rule on the subject; especially as it is apparent that some of the States, under the existing system, may dispense, as some of them have done in the past, with an election of electors by the people, and thus to that extent defeat the popular will.

FOURTH.

What we have already said of the dangers which may result from having no tribunal provided by the Constitution for the settlement of contests and questions growing out of elections for President and Vice-President need not be repeated. The amendment now proposed provides that the returns of the election shall be made to the Supreme Court of the United States within thirty days after the election, and that said court shall, under such rules as Congress may adopt, or such as the court, in the absence of law, may adopt, determine any contest in respect of such returns, canvass the same, and declare within ninety days after the election, by public proclamation, who is elected President and who is elected Vice-President.

Without going into a lengthy argument in this report in support of this branch of the proposition, we state that we are satisfied that, conceding that it is important (and we think it is vitally important) that there should be a tribunal created by the Constitution for canvassing the returns and determining questions arising thereupon, the plan of having the Supreme Court of the United States to determine these questions is preferable to any other, and mainly because its rulings and decisions, while they are apt to be characterized by an intelligent apprehension and clear understanding of the questions of law and fact involved, will be made with less of partisanship and party bias than that of any tribunal which could be established for the purpose of deciding these questions, and its judgments and rulings would therefore be more likely to be acquiesced in by the people and regarded as a final settlement of the question. The court is independent of the executive department, and so far as it can be is independent also of the other department of the government; and with the provision in the proposed amendments that "no person who has been a justice of the Supreme Court shall be eligible to the office of President or Vice-President," adopted, that court would be as completely free of any of the motives or influences which would weaken the force of its final adjudications on the questions submitted to it, in the judgment of the country, as that or any other tribunal could be made. And, after all, the sanctions of an indorsement by the people of the United States, or their acquiescence in measures affecting the country, is the most important consideration connected with legislation. The Supreme Court has always enjoyed the confidence of the people of the United States, and their faith in its wisdom and integrity is well founded. We do not mean to intimate a doubt that it will continue to deserve the fullest confidence of the whole country by reporting a proposition to make its members ineligible to the office of President or Vice-President; but it will relieve the court, besides being fitting that, as the court is, under the proposed amendments, to decide questions which may in some cases be decisive of the result of a Presidential election, its members should be relieved of the possible imputation of having a personal interest in *the action of* the court.

FIFTH.

The amendments now proposed provide that the person having the highest number of Presidential votes in the United States shall be President, and so of the Vice-President. This substitutes what is known as the plurality rule for the majority rule. Under the present provision of the Constitution, there can be no election except by a majorty of all the electoral votes; and if no candidate receives such majority, the election is thrown into the House of Representatives, where the choice is made between the three highest candidates.

By the amendment proposed, the candidate receiving the highest number of votes cast in the United States will be elected, although he may not have a majority of all the Presidential votes, so that *the election in every case is final.* This finality of the election is the feature which chiefly recommends the plurality plan, as, being final, it does away with the unfairness and the danger of an election by the House of Representatives. Under the present system of electing a President and Vice-President, unless there is a candidate who has received a majority of the electoral votes, the election is thrown into the House, where, to say nothing of the other elements of unfairness in such an election, as an election, not by the people, but by the House of Representatives, the voting in the House is confined to a selection between the candidates, not exceeding three, having the highest number of electoral votes; and in this case the majority vote is the result of compulsion—a choice between what the Representatives may regard as evils.

The majority should govern; but it is submitted whether, if requiring that a candidate shall receive a majority of the electoral votes, as under the present system, may necessitate a choice by the House of Representatives, and the evils and dangers of such an election as the latter, it would not be best to adopt the amendment proposed, and so make the action of the people final. The people vote for whom they please, and with a full knowledge that the candidate receiving the highest vote is to be declared, elected; and there seems to be no good reason why they should be compelled to form themselves into a majority, nor any good reason why, if the candidate has a majority over any other candidate, he should not be declared elected.

It is said that an officer elected by a majority of all the votes cast carries with him a greater moral force and authority than one receiving only a plurality of the votes. But this is doubtful. In every State where this plurality rule is in force, for many years, it has worked well and given satisfaction; and if the amendments now proposed in this regard shall be adopted and ratified, we think a President and Vice-President elected thereunder, who has received a plurality of all the votes cast at a fair election, would carry with them the whole moral power of the office. It would be very different from the case of a candidate in the minority at the polls who had received fewer votes than other candidates being made President by the vote of the House of Representatives as was the case with John Quincy Adams, and different also from the case of one who succeeds to the office of President by the death of the incumbent of that high office.

The moral force of Mr. Polk, General Taylor, Mr. Buchanan, and Mr. Lincoln was not impaired by the fact that they had received a plurality only of all the votes cast at the polls.

If the plurality system is adopted, and the people vote directly for President and Vice-President, every voter casts his vote with a full knowledge that the candidates receiving the highest number of votes

will be declared elected; and this takes away the inducement to scatter the vote and throw the election into the House, as under the present system. The electoral colleges under the present system in all the States may be chosen by a plurality vote, as there is no provision of law in any of them that the electors shall have a majority of all the votes cast in the State.

HORACE H. HARRISON.

The committee authorize the making of the foregoing report, without committing themselves to the reasoning of the report as to the power of the Senate and House in the counting of the electoral vote under existing provisions of the Constitution.

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## THE VIEWS OF A MINORITY.

Mr. H. Boardman Smith submitted the following as the views of a minority:

Mr. H. Boardman Smith, of the Committee on Elections, for the purpose of obviating the danger and difficulty of a large accumulation of contested-election cases in the electoral districts proposed, and to prevent the gerrymandering of States by partisan majorities in the construction of the electoral districts, and to dispense with the cumbersome and useless machinery of electoral districts, while preserving the autonomy of the States in the election of President and Vice-President, proposes the following substitute for the joint resolution reported by the committee:

JOINT RESOLUTION proposing an amendment of the Constitution in respect of the election of President and Vice-President.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That the following article is hereby proposed as an amendment to the Constitution of the United States, and, when ratified by the legislatures of three-fourths of the several States, shall be valid, to all intents and purposes, as a part of the Constitution, to wit:

ARTICLE —.

SECTION 1. The President and Vice-President shall be elected by the direct vote of the people; but no voter in any State shall vote for candidates for President and Vice-President who are both citizens of the same State with himself.

SEC. 2. In counting the votes, the aggregate popular vote, in each State, for President and Vice-President, shall be respectively divided by the number of Representatives apportioned to such State in the House of Representatives, and twice the result, or quotient, shall be added to the vote of the candidate having the highest number of the popular vote in such State, for President and Vice-President respectively, as and for the State vote for such candidate. The person having the highest number of votes in all the States, including the popular vote and the State vote, for President, shall be President, and the person having the highest number of votes in all the States, including the popular vote and the State vote, for Vice-President, shall be Vice-President.

SEC. 3. The Congress shall have power to provide for holding and conducting the elections of President and Vice-President. The returns of such elections shall be made to the Supreme Court of the United States within thirty days after the election. Said court shall, under such rules as may be prescribed by law, or by the court in the absence of law, determine any contest in respect of such returns, canvass the same, and declare, within ninety days after such election, by public proclamation, who is elected President and who is elected Vice-President.

SEC. 4. No person who has been a justice of the Supreme Court shall be eligible to the office of President or Vice-President.

## GAUSE vs. HODGES.—FIRST CONGRESSIONAL DISTRICT OF ARKANSAS.

Charges that spurious and illegal votes were counted and the ballot-box containing the votes of Crittenden County was taken out of said county, and there counted and tampered with. Returns of the precinct votes suppressed on plea of irregularities, and the votes of qualified electors rejected.

Committee held that a registrar of election has no authority to make a certificate of registration or disfranchise an elector by erasing his name from the poll-book.

The governor has authority to set aside a registration, but the committee held that a fair construction of this law did not give the governor the authority to disfranchise a county by setting aside the registration.

Majority and minority report submitted.

Majority report adopted.

Authorities referred to: U. S. Statutes at Large, vol. 9, pages 569-570, sec. 9; laws of Arkansas, 1868, sec. 23, page 59; laws of Arkansas, 1868, secs. 6, 9, 14, 15, 39, 40, 41.

February 24, 1875.—Mr. Pike, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the claim of Lucian C. Gause to a seat in the Forty-third Congress, from the first Congressional district in the State of Arkansas, against Asa Hodges, sitting member, submit the following report:*

The contestant's notice of contest is as follows:

LITTLE ROCK, ARK., *March* 7, 1873.

To Hon. ASA HODGES:

SIR: On the 18th day of last month his excellency Elisha Baxter, governor of the State of Arkansas, issued and caused to be published what he termed a proclamation of the election in the first Congressional district of said State, for a Representative to the Forty-third Congress from said district, held on the 5th day of last November, a true and perfect copy of which in print is to be found herewith and is part hereof. And from such paper it appears no result of such election is announced, but a statement merely is made of what purports to be the vote received by yourself as one candidate, and by myself as the only other candidate, and certain notes or memoranda are made as to the votes of some of the counties in such district.

But you are notified that I claim to be legally elected such Representative, and that I am entitled to the seat in Congress as such, and I will present my claim thereto at the meeting of such Congress on the first day thereof. And I shall also contend and attempt to show that you are not elected such Representative, and that in no event can you take the seat as such. And I shall ask such Congress to declare that I am entitled to the seat upon these grounds, viz:

First. You are ineligible and cannot hold the position of Representative, because you are not now, and were not at the date of said election, nor have not been since then, either a resident or citizen of said district; but that at the time of said election and ever since, continuously, you have been a resident and citizen of the third Congressional district of said State. And again, at the time of said election you were, and you are now, a senator in the legislature of Arkansas, and on the 4th day of March, 1873, and each day since then, you have acted as such in every respect in the legislature now in session at this place.

And as matters immediately affecting such election, I shall insist upon and claim as follows:

1st. In the county of Crittenden, in said district, there were 1,000 spurious and illegal votes counted and added to your vote, which, in part, were never cast, but were pretended to be cast; and this number should be deducted from what purports to be your vote in said county, viz, 1,889.

2d. The ballot-box containing the votes of said county of Crittenden was taken, contrary to law, out of said county, and carried to Memphis, Tenn., and there opened and tampered with to such an extent as to change the real and true result of the election in said county at least 1,000 votes as against myself.

3d. In the county of Conway, in said district, the true vote should be, and is, for myself

1,032 votes, instead of 227, and for yourself 566, instead of 145, as stated in said proclamation, and that my majority in said county is 466.

4th. In Fulton County, in said district, 200 legal and qualified voters, who would have voted for me if permitted to vote, and who came forward and offered so to do, were illegally stricken from the list, and were thus refused and denied the right to vote, and I am legally entitled to have that number added to my vote.

5th. In Izard County, in said district, 400 legal and qualified voters, who would have voted for me if premitted to vote, and who came forward and offered so to do, were illegally stricken from the list of voters, and were thus illegally refused and denied the right to vote, and I am legally entitled to have that number added to my vote.

6th. In Independence County, in said district, there were 236 votes cast for me, legally and properly, at the outside polls; but they were illegally rejected, when, in fact, they should be counted for me. And in said Independence County 500 legal and qualified voters, who would have voted for me, and came forward and offered so to do, were illegally stricken from the list, and thus were refused and denied the right to vote, contrary to law, and I am entitled to have both said numbers (236 and 500) added to what purports in said proclamation to be my vote in said county, viz, 585.

7th. In Jackson County, in said district, there were cast at said election for me 550 votes at the outside polls, legally and properly, but they were rejected, contrary to law, when, in fact I am entitled to have the same counted in my favor. And in said Jackson County there were, at said election, 300 legal and qualified voters who would have voted for me, and came forward and offered so to do, who were stricken from the list of voters in said county contrary to law, and were illegally refused and denied the right to vote; and I am entitled to have said numbers (550 and 300) added to my vote, as appears by said proclamation in said county, viz, 359.

8th. In the township of Eames, in Monroe County, I received a majority over you of 91 votes, and in the township of Hampton, in the same county, I received a majority over you of 100 votes, but the returning-officers of said county failed to report the same and reported you as having a majority in said county over me of 16 votes, when in fact and in truth my majority in said county is 175, and I am entitled to have the same added to to my vote.

9th. In the county of Mississippi, in said district, in addition to the vote given me by said proclamation, I am entitled to have counted 450 votes that were actually cast for me, in accordance with law, but the same were illegally and fraudulently thrown out or rejected by the returning or canvassing officers of said county; and in said county there were 150 illegal and spurious votes cast for you, which should be deducted from your number of votes.

10th. In the county of Searcy, in said district, there were at said election 300 legal and qualified voters who would have cast their votes for me if permitted, and who came forward and offered so to do, but they were illegally and fraudulently stricken from the list of voters, and thus were denied the right to vote, and I am entitled to have this number added vote.

11th. In the county of Van Buren, in said district, there were cast for me 305 votes, legally and properly, in addition to the number appearing in said proclamation, but they were not returned by the canvassing-officers of said county, but were illegally and fraudulently thrown out and rejected, and I am entitled to have this number added to my vote.

12th. In the county of Woodruff, in said district, there were 400 legal and qualified voters stricken from the list of voters in said county, contrary to law, and all of them would have voted for me, and came forward and offered so to do, but were fraudulently and illegally refused and denied the right to vote, and I am entitled to have that number added to my vote.

13th. In the county of Green, in said district, there were cast for me 734 votes, and for yourself 25 votes, legally and properly, by qualified voters, but no estimate in said proclamation is made thereof, but I am entitled to have a majority added to my number in consequence of that vote of 709.

14th. The county of Lincoln, of which a note is made on said proclamation, is no part of said district, nor is any portion of said county a part thereof, and the vote of said county, or of any part thereof, should not be counted in said election.

Which several errors and mistakes being examined into and corrected by the House of Representatives of the Congress of the United States, at its next meeting, as I shall then ask to have done, will show that I am legally and justly elected such Representative over you by a majority of 2,300 votes, and that any claim you may assert to the seat as such Representative is unfounded in law and in fact.

Respectfully, L. C. GAUSE.

The following is the answer of the sitting member:

LITTLE ROCK, ARK., *March* 28, 1873.

L. C. GAUSE:

SIR: On the 7th day of March, 1873, I received a notice from you of said date, informing me that you claimed to be legally elected a Representative to the Forty-third

Congress of the United States, as a member from the first Congressional district of the State of Arkansas, and that you will present your claim to said Congress on the first day thereof, and claim to be admitted as such Representative. You also inform me that you contest and deny my right to a seat as a Representative elected by the people of said first Congressional district at an election held by them on the 5th day of November, 1872. You refer to and make part of your said notice a printed paper, purporting to be a proclamation, dated the 18th day of February, A. D. 1873, issued by his excellency Elisha Baxter, governor of the State of Arkansas, in reference to said election. But before proceeding to answer the allegations of your said notice, I hereby insist that the matters and things set up in said notice of contest are not good and sufficient in law to authorize you to have and maintain against me your said notice of contest and entitle you to occupy or hold said seat, because you do not sufficiently and specifically set forth in said notice of contest the grounds upon which you rely, or intend to rely, in your contest. Your said notice is vague, indefinite, uncertain, general, and by no means sufficiently explicit to enable me to understand and defend properly your said contest. And I shall insist before said Congress upon the dismissal of your said notice and claim of contest. And not in any manner waiving or intending to waive said objections or any other objection that I have the right to make to your said notice of contest and claim to said seat, I will now proceed to answer in detail your said notice of contest.

I deny that the printed paper referred to, filed and relied upon by you, is a true and correct copy of the proclamation of his excellency Elisha Baxter, governor of the State of Arkansas; but, if true, said printed paper establishes the fact that you are not entitled to said seat, and were not elected as a member from said district and State to the Forty-third Congress of the United States, but it establishes the fact that I am so elected and entitled to said seat, which I claim.

1st. I deny, as alleged by you, that you are legally elected a Representative from the first Congressional district of Arkansas to the Forty-third Congress of the United States, or that you are entitled to said seat.

2d. I deny, as alleged by you, that I am not elected such Representative, and, as such, entitled to said seat. I contend that I was legally elected such Representative and entitled to said seat, and will insist before said Congress, on the first day thereof, upon my right to take and hold said seat.

3d. I deny, as alleged by you, that I am ineligible and cannot hold the position of Representative, because I am not now, and was not at the date of said election, nor have not been since then, either a resident or citizen of said district, but at the time of said election, and ever since continuously, have been a resident and citizen of the third Congressional district of said State. I contend that I am now, and was at and before said election, a resident citizen of the county of Crittenden, within said first Congressional district, and have been for many years prior thereto; owned real estate and other property in said county of Crittenden, and have had, during all said time, a furnished dwelling-house on one of my plantations in said county, and frequently occupy the same with myself and family; that I cultivate said plantation; have always registered, paid poll-tax, and voted in the said county since the year 1860, and have not registered, paid poll-tax, or voted elsewhere in the State of Arkansas. It is true, however, that I also own a residence and occupy it temporarily in the city of Little Rock. I also own business property in said city, and a plantation in the county of Pulaski, near said city; but I am now, and was at and before said election, a *bona-fide* resident citizen of the county of Crittenden. I admit that Little Rock and Pulaski County are within the third Congressional district of Arkansas. I contend that I am not ineligible in consequence of my temporary residence in the city of Little Rock.

Further answering, I admit, at the time of said election, I was a senator in the legislature of the State of Arkansas, previously elected from the ninth district of said State, composed of the counties of Crittenden, Saint Francis, and Woodruff, all of which counties are within the first Congressional district of said State. I admit that I have continued to act as such senator in the legislature of the State of Arkansas from the 4th day of March, 1873, up to the present time, but I insist and will contend upon the hearing of this contest before said Congress that I am not ineligible to a seat in said Congress as a Representative from the first Congressional district of the State of Arkansas; that said offices are not incompatible, and there is really nothing in either ground of objection taken by you in your notice on account of my residence or State office held by me as above stated.

4th. Further answering your notice of contest, I deny, as alleged by you, that in the county of Crittenden there was 1,000 spurious and illegal votes counted and added to my vote, or that there was any other number of spurious and illegal votes counted and added to my vote, which, in fact, were never cast. And I deny that said number or any other number should be deducted from what purports to be my vote in said county—1,889. I further deny, as alleged by you, that the ballot-box containing the votes of said county was taken, contrary to law, out of said county, and carried to Memphis, Tenn., and there opened and tampered with to such an extent as to change the real and true result of the election in such county at least 1,000 votes, or any other number of votes, as against you. The real truth of the case in reference to the ballot-boxes of said Crittenden County being taken out of the State to Memphis, Tenn., is as follows: Crittenden is a border county on the Missis-

sippi River, opposite Memphis, Tenn. Four of the voting townships of said county of Crittenden are on said river, opposite and below Memphis, and the ordinary way of reaching the county-seat of Crittenden County from said districts or townships is by steamboats on said river; that said route of travel necessarily took the officers of said election from said four townships up said river by the way of Memphis, and said officers, who had the legal custody of the ballot-boxes of said voting townships, reached Memphis on a steamboat on their way to the county-seat of Crittenden at night, and were landed on the Memphis side of said river after night, and they were in consequence thereof necessarily compelled to remain all night in Memphis, but said ballot-boxes were safely and securely taken care of and preserved by them, and in no wise opened or tampered with, or the votes changed or added to in any manner whatever. Furthermore, said votes were counted as required by law, the result proclaimed by the officers who held said elections, and the ballot-boxes containing said votes cast at said election sealed up and delivered to the proper officers of said election before they left the places where said elections were held. And said officers, in all respects, performed their duties in reference to the delivery of said ballot-boxes containing the votes cast at said elections. You were not prejudiced in any manner whatever by the action or conduct of said officers or any other person.

5th. Further answering your notice of contest, in reference to the county of Conway. I deny, as alleged by you, that in the county of Conway, in said district, the true vote should be, and is, for yourself 1,032 votes, instead of 227 votes, and for myself 566 votes, instead of 145 votes, as stated in said proclamation. I contend that the legal vote cast in said county is as stated in the original proclamation, and not as stated in the printed paper filed by you, for you 227 votes, and for myself 145 votes, and I therefore deny, as claimed by you, that your majority in said county is 466 votes.

6th. Further answering your notice of contest in reference to Fulton County, I deny, as alleged by you, that in the county of Fulton, in said district, 200 legal and qualified voters, or any other number of legal and qualified voters, who would have voted for you if permitted to vote, and who came forward and offered to do so, were illegally stricken from the list, and were thus refused and denied the right to vote. I deny that you are entitled to have said 200 votes, or any of them. I deny that you have any majority in said county of Fulton, as I will herein set forth and explain.

7th. Further answering your notice of contest in reference to Izard County, I deny, as alleged by you, that in Izard County, of said district, 400 legal and qualified voters, or any other number of legal and qualified voters, who would have voted for you if permitted to vote, and who came forward and offered to do so, were illegally stricken from the list, and were thus refused and denied the right to vote. And I deny that you are entitled to have said number, or any other number, added to your vote in said county. I contend that the majority given you in said proclamation in Izard County of 441 votes is not your true majority; that your real majority over me in said county, as I will hereinafter explain and set up in this answer, is only 300 votes.

8th. Further answering your notice of contest in reference to Independence County, I deny, as alleged by you, that in Independence County, in said district, there were 236 votes, or any other number of votes, cast for you legally and properly at the "outside polls," which were illegally rejected, when, in fact, they should be counted for you. I deny that said "outside polls" were legal and valid polls, or that the officers or persons who pretended to hold said elections at said "outside polls" were legally appointed, elected, or sworn, as required by law. And I deny that their returns of said elections, if any were made, are legal and valid evidence for you in this contest. I further deny, as alleged by you, that in said county of Independence 500 legal and qualified voters, or any other number of legal and qualified voters, who would have voted for you, and came forward and offered to do so, were illegally stricken from the list, and thus were refused and denied the right to vote, contrary to law. I deny, as contended by you, that you are entitled to have both said numbers, or either of them, 236 and 500, added to what purports in said proclamation to be your vote in said county, viz, 585. In fact, I contend that you have reported in your favor more votes than you legally received or were entitled to receive in the county of Independence.

9th. Further answering your notice of contest in reference to Jackson County, the county in which you resided at said election, and still reside, I deny, as alleged by you, that in Jackson County, in said district, there were cast at said election for you 550 votes, or any other number of votes, at the "outside polls," legally and properly, which were rejected, contrary to law, when, in fact, you are entitled to have the same counted in your favor. I deny that you are entitled to have any part of the vote cast at said "outside polls" counted in your favor, for the reasons hereinafter set forth in this answer. And further answering your notice in reference to the said county of Jackson, I deny, as alleged by you, that in the county of Jackson there were at said election 300 legal and qualified voters, or any other number of legal and qualified voters, who would have voted for you, and came forward and offered to do so, who were stricken from the list of voters in said county, contrary to law, and were illegally refused and denied the right to vote. I further deny, as contended by you, that you are entitled to have said numbers, 550 and 300, or any other number or numbers, added to your votes. You really

received more votes than you are entitled to have counted in your favor in said county of Jackson.

10th. Further answering your notice of contest in reference to the county of Monroe, I deny as alleged by you that in the township of Eaves, in Monroe County, you received a majority over me of 91 votes, or any other number or majority of votes. And I deny that in the township of Hampton, in the same county, you received a majority over me of 100 votes, or any other majority or number of votes. I deny as alleged by you that the returning-officers of the county failed to report the same. I admit that the officers of election reported for me a majority over you of 16 votes in said county; and I contend that I am entitled to the majority reported in said county, and that I am really entitled to a greater majority than reported. I deny as alleged by you that in fact and in truth your majority in said county is 175 votes, or any other number or majority of votes. I deny that you are entitled to have said number or any other number added to your vote. No injustice was done you in said county. My real majority in said county over you is as much as 66 votes. The reasons therefor I will hereafter set forth in this answer.

11th. Further answering your notice of contest in reference to Mississippi County, I deny, as alleged by you, that in the county of Mississippi, in said district, in addition to the vote given you by said proclamation, you are entitled to have counted 450 votes, or any other number of votes that were actually cast for you in accordance with law. And I deny that said number or any other number of votes were illegally and fraudulently cast out or rejected by the returning or canvassing officers of said county. You received in said county of Mississippi, in said election, and had counted for you, more votes than were legally cast or entitled to be cast by persons entitled by law to vote. I further deny, as alleged by you, that in said county there were 150 or any other number of illegal and spurious votes cast for me which should be deducted from my number of votes. I deny that you received the number of votes returned and counted for you in said proclamation. And I deny that you have, or that you are entitled to, any majority over me in said county of Mississippi; but, upon the contrary, I contend that upon a fair examination, correction, and count of the vote of said county, I have and am entitled to have counted a majority of 215 votes over you, as I will hereinafter more specifically set forth.

12th. Further answering your notice of contest in reference to the county of Searcy, I deny as alleged by you that in the county of Searcy, of said district, there were, at said election, 300 or any other number of legal and qualified voters who would have cast their votes for you, if permitted, and who came forward and offered so to do, but were illegally and fraudulently stricken from the list of voters, and thus were denied the right to vote. And I deny that you are entitled to have said number or any other number of votes added to your vote. I deny that the vote of said county was correctly and legally counted for you. More than 200 votes cast for other persons other than you or I were added illegally to your said vote in said county. And I contend that the number of votes thus added to your vote should be stricken from your vote in said county.

13th. Further answering your notice of contest in reference to the county of Van Buren, I deny, as alleged by you, that in the county of Van Buren, in said district, there were cast for you 305 votes, or any other number of votes, legally and properly, in addition to the number appearing in said proclamation, which were not returned by the canvassing-officers of said county, but were illegally and fraudulently thrown out or rejected. I deny that you are entitled to have said number or any other number of votes added to your vote. In fact, there were returned and counted for you more votes than you received in said county, and I contend that the number of votes (305) you claim in addition to your reported vote were really cast and intended to be cast for a different man.

14th. Further answering your notice in reference to Woodruff County, I deny, as alleged by you, that in the county of Woodruff, in said district, there were 400 or any other number of legal and qualified voters stricken from the list of votes in said county contrary to law, and that all or any of them would have voted for you, and came forward and offered so to do, but were fraudulently and illegally denied and refused the right to vote. I deny that you are entitled to have said number or any other number added to your vote.

15th. Further answering your notice of contest in reference to the county of Greene, I deny, as alleged by you, that in the county of Greene, in said district, there were cast for you 734 votes, and for myself 25 votes or any other number, legally and properly, by qualified voters. And I deny that you are entitled to have a majority added to your number in consequence of that vote of 709, or any other number whatever. I admit that no estimate was made of said vote in said proclamation, and I contend that no such estimate or any other estimate of any vote cast or attempted to be cast or returned from said county of Greene should have been counted, nor should it be taken hereafter into the estimate or count of the vote cast in said Congressional district in said election, because before said election in said county of Greene the then acting governor of the State of Arkansas, O. A. Hadley, legally and properly set aside the registration had or then being had and made in said county, and ordered a new registration, which was not completed on the day of said election. Said registration so set aside was procured by force, fraud, and intimidation on the part of your political friends and adherents. They fraudulently forced and compelled by violence the board of registrars in said county to register several hundred

persons in said county who were disfranchised by the constitution and laws of the State of Arkansas, and who were notoriously known not to be entitled to register or vote in said election. Your friends used every unfair means they could to prevent a free, fair, full, and legal registration in said county pending said registration. And such unfairness, force, fraud, and intimidation being brought to the knowledge of the then executive of said State, he properly and legally set aside said registration, and thereupon ordered a new registration, which was not completed in time to hold said election, because of the fraud, force, and intimidation on the part of your political friends and adherents. Consequently, no legal and valid election was held in said county on the 5th day of November, 1872; that the persons or officers who pretended to hold said election in the various precincts of said county were not legally appointed, elected, qualified, authorized, or sworn in any manner before they proceeded to hold said pretended election, and no legal and valid returns thereof were made of said election, and the returns thereof are illegal and void. They are set up by you and your friends to produce strife and confusion, and you should not be allowed in this contest to take or claim any advantage or benefit therefrom. I further contend that if a full, free, and fair registration and election had been had and held in said county I would have received a large proportion of the vote of said county, which would have been much more favorable to me and the Republican candidates than the result you claim.

16th. Further answering your notice of contest in reference to Lincoln County, of which a note is made in said proclamation and referred to by you, I deny, as alleged by you, that said county of Lincoln is not part of said district, nor is any portion of said county a part thereof. You also contend that the vote of said county or any part thereof should not be counted in said election, which I deny. I contend that said county is a part of said Congressional district, and the vote cast therein is legal and was cast according to law, and should have been estimated in said proclamation and counted for me: that I am prejudiced on account of the failure and refusal of Governor Baxter to count the vote cast for me in said county. I will contend in this contest before said Congress that the 624 votes cast for me in said county of Lincoln be added to my vote in said election, and if thus added, will increase my majority over you to the extent of 484 votes, which is the legal majority received by me over you in said county. The estimate of said vote in said county embraces only that part of Lincoln which previously belonged and still belongs to said first Congressional district, and should therefore be counted in this contest, as Lincoln County has not been assigned or attached to any other Congressional district, and said vote so cast as aforesaid has not been counted or taken into consideration in any other count or estimate of the vote of any other Congressional district.

17th. Further answering your notice of contest, I deny that you are entitled to any correction of supposed or alleged errors and mistakes set up in your said notice; and I deny that upon your proposed investigation that it will show that you are legally and justly elected such Representative over me by a majority of 2,300 votes, or by any other majority or number of votes. And I deny, as alleged by you, that my claim, or any claim that I may assert to the seat as such Representative, is unfounded either in law or in fact. I contend that I am, upon a fair and just estimate and correction of said vote, elected such Representative over you and entitled to my seat as such by a majority of at least 5,700 votes, and that I am elected such Representative over all others.

18th. And having fully answered your notice of contest, I hereby in addition state that you are not entitled to said seat, and that you cannot maintain your said contest, because for that, on the 14th day of December, 1872, the returns of said election from all the counties in said first Congressional district of the State of Arkansas, except the returns from the county of Greene, for a member of Congress to represent said district in the Forty-third Congress of the United States, having been made and being on file in the office of the secretary of state of the State of Arkansas, the then secretary of said State, J. M. Johnson, acting as such secretary, in the presence of O. A. Hadley, the then acting governor of said State, within the time and in the manner prescribed by law, did cast up and arrange the votes from the several counties, except the county of Greene from said Congressional district for such persons voted for as members of Congress, the said secretary of state being the convassing officer or board for said purpose, and that upon said casting up and arranging the votes from the several counties aforesaid it was ascertained, determined, and declared that I was elected a member of Congress from the first Congressional district of the State of Arkansas to the Forty-third Congress of the United States; and that a record and entry of said canvass and result was then and there made by the said secretary of state in the presence of said Governor Hadley, and approved by him, which record and entry of said canvass and result is legal and binding; and he, said governor, agreed then and there to issue to me a certificate of my election according to law, but for some reason unknown to me failed to issue said certificate and a proclamation of said result, as it was his duty by law to do. I hereby make part hereof and file herewith a true copy of said result and canvass, as made and certified by said J. M. Johnson, dated the 25th day of January, 1873, from which paper it does appear that I am duly elected such Representative by a majority of 1,713 votes over you. I contend that you had full notice of said canvass and result, and of the record thereof as made by said Johnson as aforesaid at the time it was made, inspected the same, and, having failed to serve me

with a notice of contest within thirty days next after said canvass and result, made and determined on the 14th day of December, 1872, you cannot now claim any right before said Congress to legally contest my right to said seat, and that you are now barred of all claim or right in this case, and that your said contest for the reasons alone herein set forth should be dismissed and disregarded, and I will so contend upon the hearing of your said contest; but not resting this case alone upon this plea or objection, I contend for all the objections made in this answer.

19th. In the county of Cross, in said district, where you have a reported vote of 552 and I a reported vote of 298, making for you a majority of 254 votes, and of which you obtained the benefit by said proclamation, and also in the canvass of said Johnson, of the 14th day of December, 1872, there was no legal and valid election or returns of said election. The persons who pretended to act as officers of election in the various precincts of said county were not legally appointed, elected, or sworn according to law before they proceeded to hold said election. They fraudulently and illegally permitted a large number of persons to vote for you at the several precincts in said county, at said election, who were not qualified electors, nor were they registered or entitled to register or vote in said election. That the votes thus illegally cast for you in said county amounted to 300. You are not entitled to have said vote counted in your favor in this contest. Although you received the benefit of the same in said proclamation, I contend that I am entitled to have deducted from your vote in said county said 300 votes.

20th. In the county of Fulton, in said district, in addition to the objections taken to your allegations in reference to Fulton County, I contend that none of the officers of election, or the persons who acted as officers of election in said county, were legal electors. They were not appointed, elected, or sworn as required by law to hold said election. They fraudulently permitted in said election as many as three hundred persons who were not qualified electors, registered, or entitled to register or vote in said election, to vote for you, and you received the benefit of said votes by said proclamation; no legal and valid returns were ever made of said pretended election, and I am entitled to have said returns rejected, and the majority reported in your favor in said county, 283 votes, deducted from your vote in this contest.

21st. In the county of Izard, in said district, said proclamation gives you 626 votes, and to me 185 votes, making a reported majority in your favor of 441 votes, which is incorrect and illegal, because in the various voting-precincts in said county, at said election, there were cast for you 137 spurious, fraudulent, and illegal votes by the fraudulent procurement of your polititical friends. The persons who thus voted for you were not qualified electors, had not been registered, nor were they entitled to register or vote in said election. Pending said election in several of the precincts of said county, the ballot-boxes were opened contrary to law, and many votes or ballots cast for me taken out and destroyed, and large numbers of spurious and fraudulent ballots in your favor illegally substituted. The ballot-boxes of said election in said county were fraudulently tampered with to my prejudice by your friends, and I contend that I am entitled to have deducted from your vote the 441 votes above named; certainly the 137 votes should, in any event, be deducted.

22d. In the county of Lawrence, in said district, you have by said proclamation a reported vote of 599, and I have a reported vote of 89, making for you 510 majority, in said county, at said election. Your friends at all the precincts thereof, during the holding of said election, resorted to intimidation, force, fraud, and violence, by which they compelled the judges of election to permit 500 spurious, fraudulent, and illegal votes to be cast for you by persons who were not qualified electors, had not been registered, nor were they entitled to register or vote in said election. The said election and returns thereof are therefore illegal and void, and I contend that said 500 votes thus cast should be deducted from your vote in this contest.

23d. In the county of Mississippi, in said district, the original registration made in said county was obtained by the force, fraud, and violence of your political friends; and the violence was so great that it brought about a collision between the Republicans and Democrats of said county, resulting in the death of some ten or fifteen colored Republicans, my political friends. Said registration was illegal, and in consequence thereof the then acting governor of said State, O. A. Hadley, having the power by law so to do, and it being his duty, set aside and annulled said registration, and ordered a new registration of said county, which was made, as far as the time would permit, before said election; that your friends also, on the day of said election in said county, resorted to further intimidation and violence, and thus prevented a free and fair election, and deprived me of a large number of legal and qualified votes, which would have been cast for me but for said intimidation and violence. And I contend that the majority given you in said county should be deducted from your vote, and the vote thus denied me added to my vote and majority. I would have received, if said election had been fairly held, 100 more votes in said county than reported for me.

24th. In the county of Sharp, in said district, where you have a reported vote of 538, and I have a reported vote of 116, making for you a majority of 422 votes, and of which you illegally received the benefit in said proclamation; and also in the canvass of Johnson, on the 14th day of December, 1872, there was no legal and valid election, because the person who pretended to hold said election were not legally appointed, elected, or sworn according

to law. A large number of spurious, fraudulent, and illegal votes were cast for you in said election by persons not registered, or entitled to register or vote in said election; and the returns made, or attempted to be made, of said election were not signed or made as required by law. And I contend that I am entitled to have deducted from your vote the 422 votes above named.

25th. In the county of Prairie, in said district, where you have a reported vote, by said proclamation, of 1,134, and I have a reported vote of 588, making for you a majority of 546 votes, and of which you illegally received the benefit, both in said proclamation and the canvass of the 14th of December, 1872, there was no legal and valid election in said county, and you are not entitled to the benefit of said 546 majority, or any part of it, in this contest; and I will contend for its rejection, and that it be deducted from your vote in this contest, for the following reasons, to wit: There was no legal and valid registration in the county of Prairie in 1872, prior to the 5th day of November of said year. Your political friends, or some of them, fraudulently and illegally combined and confederated with the board of registrars appointed to register the voters of said county, to have all persons in said county registered without regard to right. Many persons—your political friends—were permitted to register without taking the oaths prescribed by law, and when they were not entitled to register or vote in said election. A large number of spurious and fraudulent names were illegally entered upon the books of registration. Said registration was so foul and illegal that the then acting governor, O. A. Hadley, set aside and annulled, according to law, said registration, and in lieu thereof ordered a new registration, which was not made before said election. Consequently, there was no registration in said county at or before said election. None of the persons who pretended to act as officers of election in said county, on the 5th day of November, 1872, were appointed, elected, qualified, or sworn, as required by law. The returns, as made by said officers, are informal, without authority of law, and void. Said officers of said election illegally permitted as many or more than 546 votes to be cast in said elections in said county, for you, by persons who had not been registered, nor were they entitled to register or vote in said election, well knowing that said persons were not legal electors or entitled to vote in said election. Said election was, in many other respects, unfair and illegal. The entire vote of said county should be rejected, and I will so contend in this contest.

26th. In the county of White, in said district, the officers or persons who held said election were not appointed, elected, or sworn according to law. Fraud and intimidation was resorted to on the day of election, and before, by your political friends, to prevent my political friends, and in consequence of which they did prevent them, to the extent of 200 legal and qualified voters who were entitled to vote in said election, from voting for me when they desired so to do; that there was cast for you in said county, at said election, at the various voting precincts in said county, as many as five hundred spurious, fraudulent, and illegal votes by persons not registered, nor entitled to register or vote, in said election; that many of said persons voted twice, and at different precincts in said county, on the day of said election, by the consent, procurement, and fraud of some of the officers who held said election, and by the like procurement and fraud of your leading political friends; that the frauds in said election, on the part of your leading friends in said county, were numerous and outrageous, and resorted to to defeat me and elect you. I am, therefore, entitled to have deducted from your majority in said county the five hundred illegal votes cast for you, and have added to my vote the two hundred votes which would have voted for me in said election, if permitted.

Upon the correction of the numerous errors, informalities, irregularities, and frauds set forth in this answer, and giving me the benefit of said corrections which I claim, it will appear that I am duly and legally elected a Representative from the first Congressional district of the State of Arkansas to the Forty-third Congress of the United States, and entitled to take and hold my seat therein, and that any claim that you assert or may assert to said seat is unfounded in law and in fact.

ASA HODGES.

It is admitted that there are twenty-four counties in the district. The sitting member claims that a part of the county of Lincoln, in said State, is also in the first district.

The following counties are not named in the notice of contest, and the vote therein cannot be disputed by contestant, under the pleadings, if the act of Congress is observed:*

| Counties. | Hodges. | Gause. |
|---|---|---|
| Arkansas | 641 | 638 |
| Cross | 298 | 552 |
| Craighead | 137 | 518 |
| Desha | 740 | 442 |
| Lawrence | 89 | 599 |
| Phillips | 3,933 | 917 |
| Prairie | 588 | 1,134 |
| Randolph | 199 | 300 |
| Saint Francis | 778 | 874 |
| Sharp | 116 | 538 |
| White | 305 | 1,661 |
| Vote not questioned by contestant | 7,829 | 8,772 |

In fact, the contestant claims, in his printed brief, that the vote as above stated in these counties is correct.

In addition to these counties, both contestant and sitting member admit that the following is the correct vote in—

| Counties. | Hodges. | Gause. |
|---|---|---|
| Fulton | 146 | 429 |
| Izard | 185 | 626 |
| Searcy | 370 | 103 |
| Making | 701 | 1,158 |

The sitting member, in his answer, puts in issue the vote of Cross, Lawrence, Poinsett, Prairie, Sharp, and White. In his brief, he waives exception to all but Lawrence and Poinsett.

The committee think the vote of Lawrence, as certified by the clerk, page 278 of the record, should be counted.

They reject the vote claimed to have been cast in Poinsett. The clerk who made the certificate rebuts by his testimony (Record, pp. 342, 343) any presumption of the validity of the vote which his certificate might raise. The returns, poll-books, tally-sheets, and votes were all stolen from his office. He never made an abstract of the votes as required by the law of the State (acts of Arkansas, 1868, sec. 39, p. 322), and of course never made a copy of it and sent the same to the secretary of state, as required. (*Ibid.*, p. 323, sec. 42.) He only sent a certificate founded on the affidavits of the judges of part of the voting precincts in the county. This way of making a return is substantially defective, and such a certificate can furnish no evidence of the correctness of its contents. No precinct-returns and no other evidence was before the committee.

The remaining counties in the district, and those about which there has been the most controversy, are:

| Counties. | Hodges. | Gause. |
|---|---|---|
| Crittenden | 1,889 | 294 |
| Conway | 145 | 227 |
| Greene | ..... | 340 |
| Independence | 769 | 585 |
| Jackson | 299 | 359 |
| Monroe | 829 | 903 |
| Mississippi | 378 | 417 |
| Van Buren | 131 | 141 |
| Woodruff | 685 | 490 |
| Lincoln (in part) | 624 | 144 |
| | 5,849 | 3,900 |

*Stats. at Large, vol. 9, pp. 569, 570, sec. 9.

The committee, after hearing the parties, and after a full and careful examination of the evidence and arguments, allow the votes to the respective parties to the contest as above stated.

Some of the reasons bringing the committee to this result they now proceed to state.

CRITTENDEN COUNTY.

The notice of contest makes these specifications as to this county, to wit, that—

There were 1,000 spurious and illegal votes counted and added to your vote, which, in part, were never cast, and this number should be deducted from what purports to be your vote in said county, viz, 1,889.

2d. The ballot-box containing the votes of said county of Crittenden was taken, contrary to law, out of said county, and carried to Memphis, Tenn,, and there opened and tampered with to such an extent as to change the real and true result of the election in said county at least 1,000 votes as against myself.

It will thus appear that there is no specification, or notice, or objection to any vote in this county because any election officer was not qualified to act, nor any other objection save those just named.

The contestant in his brief, if rightly understood, concedes that the vote, as above stated, was actually cast. He says, in his summary of the return, under the head of "contested vote actually cast—Crittenden: Hodges, 1,889; Gause, 294."

It is urged that the percentage of the voting-population in this county is too large as compared with other counties, and therefore ask that fraud may be presumed. This cannot furnish any reliable test, as it is well known that the proportion of the voting-population in different counties and localities, as well as in States, is widely different.

LINCOLN COUNTY.

This county was constituted in 1870 from parts of four counties, of which the county of Arkansas was one. Arkansas is in the first Congressional district. That part of it south of the Arkansas River was made part of the new county of Lincoln. This part of Lincoln was divided into four election districts on the 12th of August before the election. The court establishing these voting precincts consisted of a presiding judge and one associate member of the court.

The contestant objects that this court had no authority to act in the premises, as there was no quorum, and cites Revised Statutes, chapter 23, section 7, which provides that the presiding judge of the county court and any two justices of the peace shall be a quorum. The contestant, in his notice of contest, urges no such objection to the poll of this part of Lincoln County. His objection, then, was that neither Lincoln County, nor any part thereof, was any part of the first district. The objection now urged is not open to him.

Even if it were, it ought not to prevail. This order of the court establishing these precincts seems to have been acted on, on all hands, as a valid order. The clerk of the court acted on it and made the abstract required by law. The precincts were duly registered, officers of the election duly appointed, and an election duly held, and the returns thereof duly made. All the votes polled in these precincts for State, county, district, and municipal officers have been counted. We think the vote for Congressmen ought not to be an exception, especially when upon the pleadings no such issue was raised. These precincts must be regarded as established under color of law and as having a *de facto* existence.

MISSISSIPPI COUNTY.

The vote of only three precincts—Troy, Pecan, and Monroe—is regarded a valid by the secretary of state. A registration was commenced; it was set aside on the ground of the alleged disturbed and violent condition of the people, and a new one ordered. Only the three precincts above named were registered under this new order. The vote of these is the only one counted by General Hadley.

The clerk of this county (p. 286 of the Record) makes an abstract of returns from the townships of Scott, Chickasaba, Canadian, giving Gause 239 and Hodges 2.

The question presented by the pleadings and evidence is, whether *only* these precincts are entitled to have their votes counted.

By the registration law of Arkansas (Laws of 1868, sec. 23, p. 59), it is provided that—

"In any county of this State where, for any reason, a proper registration has not been made previous to any general election, the governor, when notified of the fact, shall cause a new registration to be made."

And by section 39 of chapter 73, page 222, Laws of 1868, it is provided that—

"On the fifth day after the election * * * or sooner if all the returns have been received, the clerk of the county court shall proceed to open and compare the several election returns which have been made to his office, shall make abstracts of the votes given for the several candidates for each office on separate sheets of paper; such abstracts, being signed by the clerk, shall be deposited in the office of the clerk, there to remain."

By section 41 of the same act the clerk is made guilty of a misdemeanor if he refuse to count the vote on any poll-book returned to him.

Poll-books and returns were returned for the rejected townships as well as for those counted. (See pp. 279 and 286 of Record.) It appears that there was not time to complete the new registration in all the county.

The authority of the election-officers appointed by the first board of registration is not set aside by the mere order for a new registration, and their power ought to continue at least until successors are appointed by the new board. The right of a man to vote does not depend upon his registration. It does not follow, then, that there might not have been a legal election in the precincts not registered anew. The clerk's certificate is *prima-facie* evidence that there were such elections, and the committee decide to count all the votes of this county, giving Mr. Gause 239 and Mr. Hodges 2 more.

MONROE COUNTY.

The contestant claims that the clerk's abstract of the vote for this county excludes the poll of two precincts, Eve and Hampton, and that the vote of these two precincts should be added.

The presumption is that the official act of the clerk is correct. To rebut this, no evidence is produced which the committee considers sufficient as to Hampton Township.

No poll-book or return, or copies of either, is produced. The clerk states that in January, after the election, they could not be found in his office.

No precinct-officer or other person has been called to show what the vote of this precinct was. The committee do not deem it proper to rely on mere conjecture.

As to Eve precinct, it does appear by the testimony of the clerk and one of the judges of the election that in this precinct Gause had 111 votes and Hodges 21, which the committee think should be added.

(S. H. Fitzhugh, pp. 177 and 178; J. B. Baxter, p. 179.)

The committee have drawn the vail of charity over some most shameful occurrences connected with this election.

VAN BUREN COUNTY.

With a view to a correct understanding of the questions raised as to the election in this county, the committee refer to section 39, chapter 73, page 322, Laws of 1868, above cited, and also section 42, page 323, of the same statutes.

The last section provides that each clerk of the county court shall, within two days after the examination and comparison of the returns of an election, deposit in the nearest post-office, on the most direct route to the seat of government, certified copies of the abstracts filed in his office of the returns of the election (as required by section 39).

By the thirty-ninth section the clerk of each county is required to file in his office an abstract of the votes given for the several candidates for each office on separate sheets of paper, and must be by him signed.

By the forty-second section he is required, within two days, to deposit in the nearest post-office certified copies of the abstracts thus filed in his office.

By the fiftieth section of this same law this official abstract of the clerk is evidence for the secretary of state to act on, in the presence of the governor, in determining who has been elected to Congress.

This abstract, thus made and filed, and certified copies of it, are *prima-facie* evidence of the vote of the county for any candidate at any election. It would seem clear that no other certificate of the clerk can be regarded as furnishing such evidence.

The paper relied on by the contestant (Exhibit A to the deposition of N. A. Saunders, p. 125 of the record) cannot be regarded as one given under the law above stated, and hence not evidence of what it is claimed to be, and cannot prove what is claimed for it.

The abstract made and filed pursuant to law is the one, a copy of which is found on page 283 of the record.

The one relied on by the contestant is a paper, a copy of which is found on pages 361 and 362 of the record, which the clerk who made it said he never intended should be regarded as the official paper required by the law.

The committee think that the only official proof furnished by this clerk is the paper acted on by the secretary of state and the governor.

It was upon the contestant to show what the vote was in the other precinct in this county, he claiming the benefit of it. The paper he relies on does not show it for the reasons above stated.

Here, then, are certain precincts which were not returned, and which might be set up by competent proof if they were legal polls. Neither copies of the election returns or the depositions of the election officers are produced. Whatever papers were sent the clerk were rejected by him as returns, and there is no evidence what they were.

CONWAY COUNTY.

In this county, D. A. Thomas was the clerk and A. D. Thomas and William Kearney assistant clerks.

**The first important question to settle is, did the clerk of the county make an official abstract of the vote and duly sign and file the same, as required by the law just above quoted, and then, did he send a certified copy of the same to the secretary of state, and which paper is it?**

**The deputies seem to have done the business of the office. William Kearney, one deputy, testifies as follows, on page 118 of the record:**

Question by counsel for contestant. Did you or not make an abstract showing the vote of Conway County, as shown by the returns so received?—A. I made the abstract. It was an abstract of the returns as they were sent up from every township.

Question by contestant's counsel. Did you or not post up that abstract in your office where it could be seen by the public?—A. I did for several days.

Q. Did you make any certified copies of the abstract of said election for or at the request of any parties?—A. I made one certified copy of the whole abstract, and made copies of parts of it for different parties.

Q. Were the ballots of said election from said several precincts of said county returned to or delivered to you; and, if so, where are said ballots?—A. They were returned to me, and said ballots are in the clerk's office now.

Cross-examined by R. A. Burton, attorney for contestee:

Q. You state that you received the returns from all the precincts in the said county. State if said returns, or pretended returns, were made out as prescribed by law.—A. Some things in regard to them were not legal. My understanding is that the ballots should be returned sealed. There were several townships, the ballots of which were not sealed, say three or four. There was one township that the ballots did not come up for ten or twelve days after the poll-books came up. There was but one township that sent up the poll-books with the certificate of the judges and clerks that it was a legal and correct election; that was Welborn Township.

Q. In what form were the pretended returns of the other precincts of the county, and did the returns show that the judges had been qualified in Welborn Township?—A. The returns from every other township were alike, except in regard to that certificate. As well as I remember, the returns of Welborn Township show that the judges were qualified.

Q. Did the judges and clerks of election for the different precincts of said county certify to you the votes as cast in their respective precincts, or merely return a statement of said vote without their certificate as judges and clerks of election?—A. The certificate was lacking upon them all except Welborn.

Q. I understand you to state that in Welborn Township alone the judges and clerks had made a certificate of the return, and that the pretended returns of the other precincts were mere statements without the certificate of the judges and clerks of the election, as required by law; do you so state?—A. I say that they lacked that certificate; but in other respects they were the same.

Q. Does the statement of the vote given by you as the vote for Gause and Hodges include the votes of the townships of said county in which the judges and clerks made no certificate of the returns?—A. Yes; that includes those townships.

**A. D. Thomas, the other deputy, on pp. 252, 253, and 255, testifies as follows:**

8. Q. (By same.) Were you present, after the holding of the election above referred to, at the clerk's office of the county of Conway when the returns of the election named were made?—A. I was.

9. Q. (By same.) Did you or did you not hold any official position at that time in said county; and, if so, what position?—A. I held an official position. I was one of the deputy clerks of the county.

10. Q. (By same ) Did you or did you not have access to said returns and an opportunity to examine them; and did you or did you not examine them? And, if so, state what was their real condition or nature. Were they regular or irregular? State the facts.—A. I had access to the returns and an opportunity to examine them. I did examine them, and found their condition to be this: to the best of my remembrance the ballots from eleven precincts came in unsealed; from one precinct no ballots came; the poll-books from twelve precincts did not show by certificate of judges that an election had been held; the ballots from one precinct came in regularly sealed, the poll-book showing, by certificates of judges, that an election had been held in accordance with law. Said certificate of judges was attested by one or more of the clerks; the returns from twelve precincts I consider irregular; the last-named precinct I consider the returns regular and according to law.

11. Q. (By same.) How many voting precincts were there in the county of Conway at and prior to said election? Name them if you remember them; and also state the name of the precinct, or the returns from which you considered regular, and the number of votes cast at said precinct for each candidate for Congress?—A. There were thirteen precincts; the names

were Howard, Cadron, East Fork, Hardin, Newton, Muddy Bayou, Benton, Walker, Union, Lick Mountain, Griffin, Washington, and Welborn. I considered the returns from Welborn Township regular; I do not remember the votes cast for either member of Congress.

12. Q. (By same.) Do you remember which candidate, Gause or Hodges, had the majority of votes cast at the Welborn precinct; and, if so, give the majority?—A. My remembrance is that L. C. Gause received a majority of votes. I do not remember the majority.

13. Q. (By same.) Were there any certificates to any of the returns of the other precincts showing or stating that an election had been held, or the number of votes cast for either of the above-named candidates for Congress, signed by the officers or persons who pretended to hold said elections? State the facts.—A. My remembrance is that there were no certificates of the officers of election showing that there had been an election held or the number of votes cast at any of the twelve precincts. I believe the returns from Washington precinct showed that the judges, previous to entering upon their duties as judges of election, were not qualified as the law directs. In view of the irregularity of these returns only one precinct was entered on the abstract of election on the regular returns sent to the secretary of state. Subsequently, however, Mr. William Kearney, deputy, did certify to parties applying for certificates the returns as they came in from all the precincts, averring to the principal, D. H. Thomas, the county clerk, that he supposed it was his duty to certify any papers in the office.

14. Q. (By same.) Did the said Kearney, to whom you refer, have any direction or authority from his principal, D. H. Thomas, the clerk of said county, to make out and certify the returns as stated by him?—A. I think not.

15. Q. (By same.) Do you know to whom said deputy, Kearney, delivered said copies or returns, and when?—A. I believe he delivered the first copy to T. D. Hawkins, of Springfield, in Conway County, and another set to C. C. Reid, jr., of Lewisburgh, in Conway County, and both sets were returned, made out, and delivered subsequent to sending the regular returns to the secretary of state.

16. Q. (By same.) Had the original returns of the twelve precincts referred to by you been changed, altered, or in any manner added to by the officers or persons who pretended to hold such election, or any other person, after they were filed in said office of the county of Conway, before or at the time when said Kearney assumed the right to certify, make out, and deliver copies thereof to the persons you named?—A. Not to my knowledge.

17. Q. (By same.) Did you or did you not, as deputy clerk for D. H. Thomas, clerk of Conway County, assist in making up said returns and certifying them to the secretary of state? If you took any part in making up and forwarding said returns, state what you did?—A. I assisted in making the returns. I disremember whether I did the writing or not. Mr. Kearney, the other deputy clerk, signed the returns and forwarded them to the secretary of state.

18. Q. (By same.) By whose authority did you and Mr. Kearney make up and forward the returns named?—A. By virtue of our appointments as deputy clerks.

19. Q. (By same.) Do you know where said original returns referred to by you are at present, or where were they when you last saw them? I mean the precinct returns.—A. I suppose they are in the clerk's office of Conway County. They were there when I last saw them.

Upon this testimony the committee think the official certificate is that found on pp. 274 and 275 of the record, and not that found on p. 271. One is dated November 9 and the other November 16, the one in time and the other out of time.

The deputy secretary of state, Frank Strong, states, on pp. 261, 262:

5. Q. (By same.) If there are in your office any such papers referring to the said election in Greene and Conway Counties, produce them and make them exhibits to this deposition.—A. I here produce two papers; one purports to be an election return or certificate of the votes cast in Greene County for member of Congress from the first district of Arkansas, and also a certificate of votes cast for Representative in Congress from Conway County. I hereto attach true copies of the same, and mark the same Exhibits B and C, and make them a part of my deposition, to which reference is here made for certainty of their contents.

Question by S. M. Barnes, attorney for contestee. Have you any other reason why the returns you refer to are not legal and valid returns? If so, state it.—A. My reason, among others, for considering the Conway County certificate illegal is, that a return from the clerk of said county, having every evidence on its face of its legality, having been already filed in the secretary of state's office, and dated seven days prior to the certificate referred to in my deposition; and I am aware of no provision in the election-law providing for additional and supplemental returns.

It appears, then, that one of these papers was transmitted in the way the law points out and the other not; that one is official and the other *not.*

Now, regarding the certificate accepted and acted on by the State authorities as the official one, upon these facts the presumption of course is that the vote, as counted, is correct.

The reasons appear in the testimony of the assistant clerks why a part of these parishes have not been taken into account.

It appears on all sides that the votes, poll-books, tally-sheets, and all, are on the files of the court, or were at the time the depositions in this case were taken.

The committee are kept in complete ignorance of what they are, and what they show, and in the absence of any competent proof to rebut the presumption, they reject the claim of the contestant of additional votes in this county.

### INDEPENDENCE, JACKSON, AND WOODRUFF COUNTIES.

In each of these counties, at one or more voting-places, persons considering that they had a right to vote, which right had been denied them at the regular polls, and perhaps others who simply desired to vote, organized what has been called "outside polls." The persons assuming to act as officers at these outside polls made returns to the clerk of the county, and the contestant claims that the votes thus returned shall be counted.

The committee are unable to find any authority for such a proceeding in either State or national law.

The national law provides a way in the election of Congressmen and Presidential electors, by which persons having the right to vote can make that right available to them when it is denied them at the regular poll. These persons did not think proper to pursue this course. They resorted to this new scheme outside the law, subversive of the purity of elections and revolutionary in the extreme.

It cannot be urged that the persons making these returns are election-officers. Their certificate, then, can have no legal force, and can furnish no evidence that what they certify to is correct.

There is no evidence that a single one of these participants at the outside voting had any legal right to vote, and the whole claim for the allowing of the vote rests simply upon the certificate of these self-constituted and illegal officials.

### GREENE COUNTY.

The registration was set aside in this county and no new one made. There were elections held in many or all of the precincts of the county under the registration rejected by the governor and by the officers appointed by that board of registration. The clerk of the county refused to receive the returns brought to him, and he never made any official abstract of them. He says they were "stolen."

The governor has authority to set aside a registration, but the committee do not think that a fair construction of this law can give the governor the authority to disfranchise a county, by setting aside the registration.

By section twenty-three the governor was authorized to cause a new registration to be made only *in the same manner in which the old registration was made.* He was not authorized to set aside the old registration, except by making a new one. And the new one must be "governed in all respects as other regular registrations under this act" (section twenty-three); that is to say, the new precinct registration must be

made between the sixtieth and tenth days preceding the election, and the new review must be made between the sixteenth and tenth days preceding the election.

The committee have before them the duplicate original returns from Bradshaw, Cache, Johnson, Salem, and Saint Francis precincts, in which the aggregate vote is, for Gause, 320; for Hodges, none. They allow the 320 for Gause. As to the vote in the other precincts, there is no return.

The summary of the vote of the district is as follows:

| Counties. | Asa Hodges. | L. C. Gause. | Counties. | Asa Hodges. | L. C. Gause. |
|---|---|---|---|---|---|
| Arkansas | 621 | 638 | Mississippi | 378 | 417 |
| Crittenden | 1,889 | 294 | Phillips | 3,933 | 917 |
| Cross | 298 | 552 | Prairie | 588 | 1,134 |
| Craighead | 137 | 518 | Randolph | 190 | 300 |
| Conway | 145 | 227 | Saint Francis | 778 | 874 |
| Desha | 740 | 442 | Searcy | 370 | 103 |
| Fulton | 146 | 429 | Sharp | 116 | 538 |
| Greene | ..... | 340 | Van Buren | 131 | 141 |
| Izard | 185 | 626 | White | 305 | 1,661 |
| Independence | 769 | 585 | Woodruff | 685 | 490 |
| Jackson | 399 | 359 | Lincoln | 624 | 144 |
| Lawrence | 89 | 599 | | | |
| Monroe | 829 | 903 | Making | 14,374 | 13,231 |

| | |
|---|---|
| Vote for Asa Hodges | 14,374 |
| Vote for Lucian C. Gause | 13,231 |
| Giving a majority of | 1,143 |

for Asa Hodges, the sitting member.

The committee, therefore, report the accompanying resolutions.

AUSTIN F. PIKE,
*For the Committee.*

*Resolved*, That Lucian C. Gause is not entitled to a seat as Representative in the Forty-third Congress from the first Congressional district in the State of Arkansas.

*Resolved*, That Asa Hodges is entitled to a seat as Representative in the Forty-third Congress from the first Congressional district in the State of Arkansas.

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## VIEWS OF A MINORITY.

Mr. Crossland, from the Committee on Elections, submitted the following as the views of a minority:

The undersigned members of the Committee on Elections dissent from the views of the majority of the committee presented by the report of Mr. Pike. Our disagreement (mainly) is in regard to the votes of the counties of Monroe, Van Buren, Conway, Greene, Independence, Poinsett, and the so-called "outside polls."

### MONROE COUNTY.

This county contains ten precincts or townships. The vote of the entire county was canvassed by Mr. Bryan, the clerk, and an abstract pre-

pared and signed showing a majority for Gause of 160 votes. Afterward the clerk tore his name from the abstract, and made another, omitting the townships of Eve and Hampton, and gave the county to Mr. Hodges by 16 majority. The reasons for excluding these precincts are too trivial for discussion. As given by the clerk himself (pages 345 and 346), they apply to both precincts, yet Mr. Pike counts the vote of Eve and excludes Hampton. He cannot properly count Eve and not count Hampton. With these counted, Mr. Gause is entitled to the county by a majority of 160 votes. By changing the abstract, the clerk gave the county to Mr. Hodges by 16 majority. The committee refuse to agree to this count, and give Mr. Gause a majority of 90 by adding the township of Eve, yet exclude Hampton for the same irregularities which the clerk adjudged sufficient to disfranchise the people of Eve. We therefore submit that the committee ought to have been consistent, and when they waived the irregularities and counted Eve they ought also to have counted Hampton and given Mr. Gause the benefit of 76 given for him in that precinct.

VAN BUREN COUNTY.

The device by which Gause was deprived of the vote of this county is novel and interesting. There are nineteen precincts in this county. The actual vote cast, returned, and counted by the clerk was as follows: Hodges, 208; Gause, 527; whole vote, 735; majority for Gause, 319. The returns from all the precincts, except Mountain, which contained only 3 votes, were duly returned to the clerk, counted by him, and abstract made as required by law; but before he mailed it to the secretary of state, he suppressed it, and made another, in "obedience to instructions received from the attorney-general." Under these instructions he suppressed the vote of eleven precincts, counted only seven, giving Mr. Hodges 131 and Mr. Gause 141, making in the whole county 272 votes. The "*instructions*" under which the clerk disfranchised the people of eleven precincts are contained in the following letter:

No. 51.—*Exhibit B to deposition of N. A. Sanders.*

LITTLE ROCK, ARK., *November* 8, 1872.

SIR: Your favor of to-day duly received and contents noted. In reply I have to say that, under the registration and election law of this State, no person is entitled to vote at any election unless his name appears on the registered list of qualified electors. When votes are received by judges of election of persons not registered, whether upon affidavits or otherwise, it renders the election in that precinct or township illegal. In fact, any violation of the election or registration law makes the election for that precinct or township *illegal.*

It is therefore your duty as clerk to not certify to the secretary of state the returns of any election precinct where the law has not been complied with.

I have the honor to be, yours, &c.,

JOHN R. MONTGOMERY,
*Attorney-General.*

To the CLERK *of Van Buren County, Arkansas.*

This paper is Exhibit B to the deposition of N. A. Sanders.

N. A. SANDERS.

Attest: JAMES H. FRASER, *Notary Public.*

This attorney-general, as a mask to his infamous fraud, pretends, in the first sentence of his "instructions," to have received a communication from the clerk. The clerk, on page 124 of the evidence, swears that he "never wrote to said Montgomery on this subject at any time." The *instructions* were gratuitous and unsolicited, and the attorney-general was guilty of deliberate falsehood by pretending that the clerk had requested instructions. The votes had been actually cast, certified by the

precinct officers, returned to the clerk, and counted, and the abstract made, as follows:

No. 50.—*Exhibit A to deposition of N. A. Sanders.*

Abstracts of votes filed in my office from the returns made by the judges of an election held in the county of Van Buren on the 5th day of November, 1872, for Representative in Congress from the first Congressional district of Arkansas, which original returns are now on file in my office.

| Township. | For Lucian C. Gause. | For Asa Hodges. |
|---|---|---|
| Griggs | 53 | 77 |
| Panther Bluff | 5 | 1 |
| Davis | 51 | 9 |
| California | 11 | 0 |
| Peter Creek | 7 | 7 |
| Hortsuggs | 14 | 12 |
| Holly | 0 | 25 |
| Cadron | 70 | 3 |
| Liberty | 27 | 9 |
| Sugar Loaf | 14 | 2 |
| Turkey Creek | 7 | 6 |
| Washington | 7 | 4 |
| Giles | 97 | 2 |
| Craig | 25 | 6 |
| Piney | 14 | 3 |
| Valley | 26 | 0 |
| Union | 41 | 6 |
| Little Red River | 58 | 6 |
| Total | 527 | 208 |

This paper is Exhibit A to the deposition of N. A. Sanders.

N. A. SANDERS.

Attest: JAMES H. FRASER, *Notary Public.*

The attorney-general, a partisan of the Hodges and Baxter family, finding that Gause and Brooks had carried the county by a large majority, interposed his "instructions," and told the clerk—

1. That under the registration and election laws of the State no person is entitled to vote unless his name appears on the registered list of qualified voters.

2. That the reception by the judges of votes of persons not registered, whether upon affidavits or otherwise, renders the election in the precinct illegal.

3. That *any* violation of the registration or election laws renders the election of the precinct illegal.

4. That it was the *duty* of the clerk not to certify to the secretary of state the returns of any election precinct when the law had not been complied with; each of which is false and fallacious.

Admit that the instructions contained a correct interpretation of the law, the clerk does not swear that he made the alteration because he discovered irregularities in the manner the election was conducted, but made it solely because he was instructed to do it. By what data, under what evidence, he assumed that the voters of certain precincts ought to be disfranchised he does not tell us. But we insist that the clerk had no power to adjudicate upon the subject of irregularities in the precincts. All that he was authorized to do was to receive and count the votes as they were returned from the precincts and make the "abstract"; his powers began and ended with the performance of these duties. He had no authority to examine, hear, or act on any other evidence than

that contained in the returns from the precincts. The majority of the committee carefully abstain from any expression of approbation in regard to what this clerk did, and insist only that he having made this second abstract and forwarded it to the governor, and the "governor and secretary of state having acted on it," it becomes the only legal evidence of the vote of the county. (See report of Mr. Pike, page 12.) I quote the argument:

"That this abstract (alluding to the second abstract made by the clerk) thus made and filed, certified copies of it are *prima-facie* evidence of the vote of the county for any candidate at any election." "It would seem clear that no other certificate of the clerk can be regarded as furnishing such evidence." And further down the page Mr. Pike says, "The committee think that the only official proof furnished by the clerk is the paper acted on by the secretary of state and the governor." In other words, a "certificate," a copy of which is *prima-facie* evidence, when "acted on by the governor of the State and the secretary," is invested with such conclusive force as to preclude all other testimony of the facts involved. Can we better present the absurdity of this proposition than to offer the testimony of Sanders, the clerk, together with the two "abstracts" made by him? the first, according to the votes cast by the people, honestly and fairly counted; the second, made under the direction of the attorney-general, for the base purpose of suppressing the voice of legal voters, to the end that a corrupt party organization might be lifted into place and power.

No. 49.—*Deposition of N. A. Sanders.*

Depositions of witnesses to be read as evidence in a certain matter of contested election for Representative in the Forty-third Congress of the United States, from the first district of Arkansas, between Lucian C. Gause and Asa Hodges, taken on the part of the said Lucian C. Gause, before me, James H. Fraser, duly commissioned, qualified, and acting notary public in and for the county of Van Buren and State of Arkansas, on the 26th day of April, 1873, and between the hours of 9 o'clock a. m. and 6 o'clock p. m. in said day, at the office of the clerk of the circuit court in the town of Clinton, county and State aforesaid, and upon the notice hereto attached.

N. A. SANDERS, a witness of lawful age, being then and there to me produced, and after being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, on his oath says:

My name is N. A. Sanders. I am thirty-six years old, and reside in the town of Clinton, county of Van Buren, and State of Arkansas. I am now county clerk of said county, and have been since about the 1st of August, 1868, continuously up to this time. As such clerk it is my duty under the law to receive and to keep the custody of all election-returns of elections held in said county of Van Buren. On the 5th day of November, 1872, there was a general election held at all the voting-precincts of said county, except Mountain precinct, which has only three voters in it, for Representative in Congress from the first Congressional district of Arkansas, at which election Lucian C. Gause and Asa Hodges were the only persons voted for. The returns of which election are now on file in my office from the townships of Griggs, Panther Bluff, Davis, California, Peter Creek, Hortsuggs, Holly, Cadron, Liberty, Sugar Loaf, Turkey Creek, Washington, Giles, Craig, Piney, Valley, Union, and Little Red River; in all, eighteen townships. On the 11th day of November, 1872, after said returns had been so filed, I made an abstract thereof, which showed, among other things, the vote cast in said above-enumerated townships for the said Lucian C. Gause and the said Asa Hodges, respectively; and in casting up said vote it appeared from said returns that the said Lucian C. Gause received 527 votes and the said Asa Hodges received 208 votes for such Representative in Congress from the first district in Arkansas, which was the whole vote cast in said county. And on the 11th day of November, 1872, I made an abstract of said returns, showing the above number of votes cast, respectively, for the said Lucian C. Gause and Asa Hodges, and prepared the same for transmittal to the secretary of state, at Little Rock; and I hereto append a copy of the same, marked Exhibit A, and made a part of this my deposition, and to which I here refer for greater certainty. Before this abstract was mailed by me I was instructed by John R. Montgomery, attorney-general of the state, concerning my return to the secretary. I then withdrew that abstract, and made out and forwarded another; and I herewith annex a copy of the letter of instruction received by me

from the said John R. Montgomery, which is marked Exhibit B, and made a part of this, my deposition. I never wrote to said Montgomery on this subject at any time. In the last abstract above mentioned, and which I forwarded to the secretary of state at Little Rock, the votes of the following townships only were certified, namely, Griggs, Panther Bluff, Davis, California, Peter Creek, Hortsuggs, and Holly; and I hereby annex a copy of said return, marked Exhibit C, and made a part of my deposition. This return gives the said Gause one hundred and forty-one votes, and the said Hodges one hundred and thirty-one votes. The following-named townships in said county, which were included in my original abstract, were not included in the abstract sent to the secretary of state, namely, Cadron, Liberty, Turkey Creek, Sugar Loaf, Washington, Giles, Piney, Craig, Valley, Union, and Little Red River, which townships cast an aggregate vote of three hundred and eighty-six votes for the said Gause, and seventy-seven votes for the said Hodges. The votes of which townships are not included in the proclamation of the governor of the State of said election, but which votes were actually cast for said Gause and the said Hodges, respectively, at the said townships, on the said 5th day of November, 1872, in said county of Van Buren; and I hereto annex a correct abstract of the votes of the said townships, respectively, taken from the original returns now on file in my office at Clinton, in said county, showing the result aforesaid, which is marked Exhibit D, and hereto referred to for greater certainty, and made a part of this my deposition. This vote counted gives the said Gause an additional majority, over said Hodges, of three hundred and nine votes. That the entire and true number of votes of the said Lucian C. Gause, in the said county of Van Buren, at said election, was five hundred and twenty-seven votes, and of the said Asa Hodges two hundred and eight, giving said Gause a majority of three hundred and nineteen votes, as the same appears from the original returns of the several townships of said county now on file in my office, instead of a majority of ten votes in favor of said Gause, as appears from the returns forwarded by me to the secretary of state. And further this deponent saith not.

N. A. SANDERS.

JAMES H. FRASER,
*Notary Public.*

This table shows the vote of the county returned by the precinct officers counted, and from which the clerk made the abstract before he received the "instructions" from the attorney-general:

No. 50.—*Exhibit A to deposition of N. A. Sanders.*

Abstracts of votes filed in my office from the returns made by the judges of an election held in the county of Van Buren on the 5th day of November, 1872, for Representative in Congress, from the first Congressional district of Arkansas, which original returns are now on file in my office.

| Townships. | For Lucian C. Gause. | For Asa Hodges. |
|---|---|---|
| Griggs | 53 | 77 |
| Panther Bluff | 5 | 1 |
| Davis | 51 | 9 |
| California | 11 | 0 |
| Peter Creek | 7 | 7 |
| Hartsuggs | 14 | 12 |
| Holly | 0 | 25 |
| Cadron | 70 | 3 |
| Liberty | 27 | 9 |
| Sugar Loaf | 14 | 12 |
| Turkey Creek | 7 | 6 |
| Washington | 7 | 4 |
| Giles | 97 | 2 |
| Craig | 25 | 16 |
| Piney | 14 | 3 |
| Valley | 26 | 10 |
| Union | 41 | 6 |
| Little Red River | 58 | 6 |
| Total | 527 | 208 |

This paper is Exhibit A to the deposition of N. A. Sanders.

N. A. SANDERS.

Attest: JAMES H. FRASER, *Notary Public.*

The following is the abstract sent up after receiving "instructions" from the attorney-general:

*Abstract of election returns for Van Buren County, for * * * * members of Congress, * * * * election of November* 5, 1872.

| Precincts. | Congress, first district. | |
|---|---|---|
| | Asa Hodges. | L. C. Gause. |
| Griggs | 77 | 53 |
| Panther Bluff | 1 | 5 |
| Davis | 9 | 51 |
| California | 0 | 11 |
| Peter Creek | 7 | 7 |
| Hartsuggs | 12 | 14 |
| Holly | 25 | 0 |
| Total | 131 | 141 |

STATE OF ARKANSAS,
*Van Buren County:*

I, N. A. Sanders, clerk of the county court for Van Buren County, do hereby certify that the above is a correct copy of the abstract of votes given for the persons therein named at the general election held in said county November 5, 1872.

Witness my hand and official seal this 11th day of November, A. D. 1872.

[SEAL.] N. A. SANDERS,
*Clerk of Van Buren County.*

The following table contains the precincts and votes suppressed under the instructions of the attorney-general:

No. 53.—*Exhibit D to deposition of N. A. Sanders.*

Abstracts of votes filed in my office from the returns of the judges of an election held in the county of Van Buren on the 5th day of November, 1872, for Representative in Congress from the first Congressional district of Arkansas, which original returns are now on file in my office, of the following-named townships in said county, to wit:

| Townships. | For Lucian C. Gause. | For Asa Hodges. |
|---|---|---|
| Cadron | 70 | 3 |
| Liberty | 27 | 9 |
| Sugar Loaf | 14 | 12 |
| Turkey Creek | 7 | 6 |
| Washington | 7 | 4 |
| Giles | 97 | 2 |
| Piney | 14 | 3 |
| Craig | 25 | 16 |
| Valley | 26 | 10 |
| Union | 41 | 6 |
| Little Red River | 58 | 6 |
| Total | 386 | 77 |

This paper is Exhibit D to the deposition of N. A. Sanders.

N. A. SANDERS.

Attest: JAMES H. FRASER, *Notary Public.*

In connection with these tables we invite a careful reading of the foregoing deposition of the clerk who prepared them.

That the object of the letter of instructions may be seen, as well as to establish the true vote of the county, we offer the deposition of M. C. Rerdell, who was at that time the sheriff of the county.

No. 55.—*Deposition of M. C. Rerdell.*

M. C. RERDELL, a witness of lawful age, being then and there to me produced, and after being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, on his oath says:

My name is M. C. Rerdell. I am thirty-one years of age, and reside in the county of Van Buren and State of Arkansas. I am now sheriff of said county of Van Buren, and have been since about the 1st day of August, 1868, continously up to this time. On the 5th day of November, 1872, there was a general election held by me as such sheriff of said county at all the election precincts or places of voting in said county, except the precinct of Mountain, for Representative in Congress from the first district of Arkansas, at which election Lucian C. Gause and Asa Hodges were the only persons voted for for Representative in Congress from said first district. Proper returns of said election were duly made from all the townships within the time and as required by law. After these returns were all made to the clerk of Van Buren County, I went immediately to Little Rock and procured from John R. Montgomery, the attorney-general of Arkansas, the letter marked Exhibit B to the deposition of N. A. Sanders, and forwarded the same to the said N. A. Sanders by special messenger, which letter prevented said N. A. Sanders from making a return of said vote to the secretary of state, in accordance with the original returns made to him by the judges of election and on file in his office, and induced him to throw out eleven townships and make a partial return, including the vote of only seven townships, to the said secretary of state. This was the object and purpose of the letter—to reduce the vote legally cast for the said Lucian C. Gause in said county. The vote of the townships returned by said N. A. Sanders is correctly exhibited by Exhibit C to said N. A. Sanders's deposition; and the vote of the townships thrown out are also correctly exhibited by Exhibit D to the same. I have examined the returns of the townships of Cadron, Liberty, Sugar Loaf, Giles, Union, and Little Red River, and know that they are regular and legal; and the vote of the same should be counted, as shown by Exhibit A to the said N. A. Sanders's deposition. I have not examined the returns from the townships of Turkey Creek, Washington, Piney, Craig, and Valley, but I believe them to be correctly set forth in said Exhibit A. I am satisfied from the returns that the true vote of said Lucian C. Gause at said election is five hundred and twenty-seven, and of the said Asa Hodges two hundred and eight; and that the vote thrown out as aforesaid was three hundred and eighty-six for said Gause, and seventy-seven for said Hodges. This vote so thrown out was not included in the result of said election as shown by the proclamation of the governor, and, when added to the vote of the said Gause, as set forth in the said proclamation, will give him an additional majority of three hundred and nine votes, his whole majority in the county being three hundred and nineteen votes instead of ten votes, over said Hodges. This election, so far as I know and was enabled to conduct it, was legally held, and returns properly made to the clerk of the county, and the vote cast for Representative in Congress from the first district was as stated above. Van Buren County is a part of the first Congressional district of Arkansas.

M. C. RERDELL.

Here is the testimony of Sanders, the clerk, Rerdell, the sheriff, Wilson, and others, all concurring that there was a fair, honestly conducted election held in each precinct in the county, showing that Mr. Gause received 527, and Mr. Hodges 208. No sane man can read this evidence and entertain a shadow of a doubt that this was the correct vote cast. Yet, according to the majority of the committee, all this truthful testimony must be disregarded because this clerk made the second abstract as directed by the attorney-general, and it was "acted on by the governor and secretary of state." In other words, it is in the power of a corrupt or ignorant clerk to stifle the voice of 463 voters by making out an "abstract" and forwarding it to the secretary of state, although its utter falsity is conclusively shown. But we have said that the "instructions" given the clerk by this corrupt partisan attorney-general did not contain the law. By the election-law of 1868, referred to by Mr. Pike, it is provided as follows:

SEC. 39. On the fifth day after the election, or sooner, if all the returns have been received, the clerk of the county court shall proceed to open and compare the several election-returns

which have been made to his office, and make abstracts of the votes given for the several candidates for each office, on separate sheets of paper; such abstracts, being signed by the clerk, shall be deposited in the office of the clerk of the county court, there to remain.

SEC. 40. Informalities in the certificates of the judges and clerks at any election held in any election district shall not be good cause for rejecting the poll-book of said election district.

SEC. 41. Should any clerk of the county court reject, or refuse to count, the vote on any poll-book of their respective counties, of any election held by the people, such rejection or refusal by such clerk shall be deemed a high misdemeanor, and the person so offending shall be indicted therefor by the grand jury of his county, and, on conviction thereof, shall be fined in any sum not less than two hundred dollars nor more than one thousand dollars, and shall be imprisoned in the common jail not to exceed four months, and his office shall be declared vacant, and he shall forever be disqualified from the holding any office of honor, trust, or profit in this State.

By section 39 the clerk is required, on the fifth day after the election, to proceed *to open and compare* the returns and make abstracts of the votes given, &c.; not to decide whether precinct-officers have discharged the duties required of them; not to decide whether irregularities had been committed; not to adjudge these questions, but *only* to *open* and *compare* and *make abstracts.*

Section 40 provides that informalities of the clerks and judges shall not be *good cause* for *rejecting* the vote of any district; and section 41 denounces a severe penalty against any clerk who shall *reject* or *refuse* to count the vote on any poll-book.

Yet the attorney-general instructed this clerk to *reject and refuse the votes;* he pursued the instructions, violated the law, and deprived Gause of 319 votes. This we say is not approved by the majority of the committee represented by Mr. Pike, but having been done they can find no remedy for the great wrong.

CONWAY COUNTY.

In this county there were thirteen precincts, and the returns show that Mr. Gause received 1,032, Mr. Hodges 556. The votes of the thirteen precincts were returned to the clerk, counted, an abstract made out, signed, and forwarded to the secretary of state, as shown by a certified copy hereto appended:

No. 8.—*Exhibit C to deposition of Frank Strong.*

At an election begun and holden in Conway County, Arkansas, on the 5th day of November, A. D. 1872, in compliance with an act of the legislature passed July 23, A. D. 1868, the following number of votes were cast for member of Congress for the first Congressional district, according to the returns on file in my office, viz:

Lucian C. Gause, 1,033 votes.

Asa Hodges, 566:

In testimony whereof I have hereunto set my hand and the official seal of court on this 16th day of November, A. D. 1872.

[SEAL]

D. H. THOMAS, *Clerk.*
By WM. KEARNEY, *Deputy Clerk.*

This was received by the secretary of state, as appears by his certificate on page 116 of the record.

This certificate shows that the clerk received, counted, and *abstracted* the vote of this county, and it was forwarded to the secretary of state. Pursuing the same villainous practices that were resorted to in Van Buren County, the deputy clerk, William Kearney, who was himself a candidate on the Baxter ticket for county clerk, discovered *irregularities* that vitiated the returns, from all the precincts except Wellborn, and forwarded another certificate or "abstract," suppressing the returns and votes in twelve precincts, and counting only Wellborn. This was the only precinct, except one, in which Kearney received a majority of votes.

and in the other he received a majority of only 19; his competitor beat him in the county by a large majority. Standing in dread of the penalty denounced by the act of 1868, he at first compared and counted the votes of all the precincts, and made out the abstract showing that his competitor and Gause had carried the county by large majorities. See the table on page 114 of the record. We have clipped from it the vote for Congress and county court clerk, for which Kearney was a candidate, made out by him and forwarded to the secretary of state.

| Offices. | Names of candidates. | Union Township. | Washington Township. | Wellborn Township. | Howard Township. | Cadron Township. | East Fork Township. | Harden Township. | Newton Township. | Muddy Bayou Township. | Benton Township. | Walker Township. | Lick Mountain Township. | Griffin Township. | Total. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Congress, 1st district... | Gause, L. C.... | 150 | 80 | 227 | 87 | 106 | 68 | 34 | 53 | 58 | 96 | 17 | 19 | 37 | 1,053 |
| | Hodges, Asa... | 96 | 24 | 145 | 92 | 48 | ... | 34 | 9 | 64 | .... | 2 | .... | 52 | 566 |
| County clerk..... | Kearney, Wm.. | 53 | 13 | 282 | 28 | 27 | 2 | 1 | 2 | 9 | 1 | 20 | 26 | ... | 464 |
| | Hinkle, John.. | 131 | 72 | 66 | 74 | 84 | 63 | 28 | 49 | 52 | 94 | 1 | 17 | 39 | 770 |
| | Henry A. B.... | 71 | 19 | 28 | 76 | 41 | 3 | 54 | 10 | 61 | .... | .... | 46 | 53 | 462 |

After this was done, he was doubtless assured by his party friends that he would be protected from the penalty, and he made out the other returns, rejected all the precincts except Wellborn, reduced Gause's majority from 466 to 82, and elected himself clerk of the county by the vote of this single precinct. We append the deposition of this Kearney, and the depositions of Hinkle, Hawkins, and Gaylor, all republicans.

John Hinkle testifies as follows (p. 111):

My name is John Hinkle. I am thirty-four years of age; am now and have been a resident of Conway County, State of Arkansas, continuously a little over thirty-one years up to the present time. At the general election held in said State and county on the 5th day of November, 1872, I was a candidate for the office of county clerk of said county, and observed very closely the manner in which said election was conducted and returns thereof made. I know that an election for Representative in Congress from the first district of the State of Arkansas, of which said county of Conway is a part, was held at all the voting-precincts of said county of Conway, according to the laws of the State of Arkansas regulating elections, on the 5th day of November, 1872, and that the only persons voted for at the said election for such Representative was Lucian C. Gause and Asa Hodges; that the said voting-precincts are in the townships of Union, Washington, Wellborn, Howard, Cadron, East Fork, Hardin, Newton, Muddy Bayou, Benton, Walker, Lick Mountain, and Griffin. I know that said election was held in all these townships, and that proper returns thereof were made by the officers holding said election to the county clerk of said county, as required by law. I have often seen and examined said returns since that time, and they appeared regular and legal. All the ballots cast at said election were also returned and deposited in said clerk's office, and, I suppose, are still in the custody of said clerk. In about three days after said election, the returns having all been made, as before stated, said clerk made an abstract thereof, showing the votes cast for the various persons voted for at said election, and among others the vote cast for said Lucian C. Gause and Asa Hodges, respectively, for said office of Representative in Congress, by which it appeared, and was so announced by said clerk, that the said Gause received at said election one thousand and thirty-two votes, and the said Hodges received five hundred and sixty-six votes, and that this is the true vote of the said county of Conway cast at said election for the persons aforesaid; that said abstract was, by said clerk, hung up in his said office at Springfield, which was then the county-site of said county of Conway, for the inspection and information of the public. I, among many others, examined said abstract, and it exhibited the vote as above stated. I applied to the said clerk for a certified copy of said abstract, which was furnished me by him, under his seal of office. I forwarded the same to Hon. James M. Johnson, secretary

of state, at Little Rock, Ark., for the purpose of procuring my commission as county clerk, and I am informed that it is still on file in the office of said secretary; and I hereto attach a copy thereof, with the certificate of said secretary thereto, and mark the same Exhibit A, and make it a part of this my deposition, which copy is correct in all things except in the casting up of the vote of the several townships. The total, by said exhibit, appears to be one thousand and fifty-three, when, by a correct addition, it should be one thousand and thirty-two for said Gause. Thus corrected, it exhibits the true vote cast at said election for said Gause and said Hodges, respectively, as the same was returned to and reported by the said clerk; and that the true vote that the said Gause received, at the said election, was one thousand and fifty-three votes, and of the said Hodges five hundred and sixty-six votes, for Representative in Congress from the first district of the State of Arkansas. Having been a candidate for county clerk at said election, I inquired into and am intimately acquainted with the whole vote cast in said county, and the statement above is correct.

## William Kearney testifies as follows (p. 117):

I am about twenty-eight years old. D. H. Thomas was the clerk of Conway County at the last general election, in November, 1872. I was an acting and duly-authorized deputy clerk at the time of said general election, to wit, on the 4th day of November, 1872. I was in charge of the clerk's office at that time. I received and counted the returns of the election from the judges of the election of the various precincts of the county, assisted by A. D. Thomas, another deputy clerk. D H. Thomas, the clerk, resided at Lewisburgh, sixteen miles from Springfield. A. D. Thomas resided four miles from Lewisburgh, on Point Remoor, and about sixteen miles from Springfield. D. H. Thomas and A. D. Thomas were seldom at Springfield, and that was the reason why I had charge of the office.

Question by contestant's counsel. Upon a count and casting up of the returns of the various precincts of Conway County, as sent in by the judges of election, what was the vote of Lucian C. Gause, according to said returns?

(Objection by R. A. Burton, attorney for contestee, Hodges. I object to the same, because it is illegal and seeks to elicit secondary testimony without first laying a proper foundation therefor.)

Answer. According to the returns, he received one thousand and thirty-two votes, and Asa Hodges received five hundred and sixty-six. There were returns received from all the voting-precincts of Conway County, to wit, thirteen, and known and designated as Griffin, Lick Mountain, Walker, Benton, Muddy Bayou, Newton, Hardin, East Fork, Cadron, Howard, Wellborn, Washington, Union.

Question by counsel for contestant. Did you or not make an abstract showing the vote of Conway County, as shown by the returns so received?—A. I made the abstract. It was an abstract of the returns as they were sent up from every township.

Question by contestant's counsel. Did you not post up that abstract in your office, where it could be seen by the public?—A. I did for several days.

Q. Did you make any certified copies of the abstract of said election for or at the request of any parties?—A. I made one certified copy of the whole abstract, and made copies of parts of it for different parties.

Q. Were the ballots of said election from said several precincts of said county returned to or delivered to you; and, if so, where are said ballots?—A. They were returned to me, and said ballots are in the clerk's office now.

## Thomas D. Hawkins testifies (p. 119):

I am a resident of Conway County; have resided in said county twenty-five years. At an election held in the first Congressional district, in the county of Conway and State of Arkansas, it being a part of said district, I know that Lucian C. Gause and Asa Hodges were the candidates voted for in the said county, at the election held on the 5th day of November, in the said county. I observed closely the manner and mode of holding said election, and believe the same was regular. I know that Asa Hodghes received five hundred and sixty-six votes in said county, and that Lucian C. Gause received one thousand and thirty-two votes in the said county, for a seat in the Forty-third Congress of the United States, according to the returns made by the judges of the election of the several precincts of the said county. I saw the returns as made by the judges of election of the several voting-precincts of the said county, to wit, Union, Wellborn, Howard, Cadron, East Fork, Newton, Muddy Bayou, Benton, Walker, Lick Mountain, Washington, and Griffin and Hardin, and know that the returns as made by the several judges show that the said Hodges and Gause received the votes above stated. I also saw the ballots of the said election returned by the judges, together with the poll-books, and know they were deposited in the clerk's office of the said county. I examined the election returns of all the precincts as they were returned to the clerk of said county. I know there was a deficiency in the poll-books of Wellborn Township, but don't recollect in what respect; but I believe it did not show that the judges of election had been duly sworn.

No. 46.—*Deposition of A. B. Gaylor.*

A. B. GAYLOR, being produced, testified as follows:

After being duly sworn, was asked to state, by the attorney for Lucian C. Gause, what he knew about the election held the 5th of November, 1872, in Conway County, State of Arkansas.

(R. A. Burton, counsel for the contestee, Hodges, makes the same objection to the taking and reading of testimony of witness Gaylor as made against the witness Hawkins.)

The witness states: I am a citizen of Conway County; am forty-nine years of age; was disinterested personally in the election of November 5, 1872; was not a candidate for any office in said election; was county and probate judge of the county of Conway at the time of said election; was a Republican, and still act with the Republican party. I saw a certified abstract, which purported to have been made out by the clerk of said county a few days after said election, which showed that Lucian C. Gause had received a majority of several —say four hundred or upward—more votes over Asa Hodges, the opposing candidate. I know that said Gause and Hodges were the candidates voted for as members of Congress to the first Congressional district of Arkansas, and that Conway County is in said district.

(Objection by R. A. Burton, attorney for contestee, Hodges.

The contestee enters the same objection to the reading of the deposition of the witness Gaylor as to the witness Hawkins.)

Cross-examined by R. A. Burton, attorney for contestee:

Q. Do you know of any elector who actually cast a vote for the contestant, Gause, as a candidate for Congress in said district? If so, name the elector, and in what precinct was the voet so cast?—A. I do not; but know of a great many who voted for Hodges.

A. B. GAYLOR.

This testimony is conclusive as to the actual votes cast by the people, and not one word of complaint of a want of perfect fairness in any precinct has been offered. And the majority of the committee (Mr. Pike's report) rehash the argument made in regard to Van Buren County, that two abstracts were made; one was "accepted and acted on by the State authorities;" and the "*presumption, of course,*" is that the vote as counted is correct. What an argument to sustain so grave an outrage! For the basest of party purposes the votes of the people of twelve whole precincts were suppressed by this *certificate*, which was "acted on," made by the dirty party tool Kearney, who by it elected himself county clerk, and by it contradicted the other *abstract* or *certificate* made under the sanctity of his official oath as deputy clerk. Of course the State authorities *acted* on the certificate that gave the vote of this county for their party friends and companions in infamy. And because this corrupt clerk, to elect himself and party friends, gave this fraudulent certificate, and it was "*acted on*" by the "State authorities" for corrupt party ends, the mouth of Mr. Gause, the people of the twelve rejected precincts, all the witnesses, must be closed; for, according to the argument, this *certificate* is conclusive. As in the case of Van Buren County, the committee refrain from approving this action of the clerk, express no opinion as to the true, honest vote cast, but *conclude* themselves by this certificate. We submit that it was the duty of the committee and is the duty of the House to take all the testimony, consider it, and determine who received the majority of the votes of this county, fairly and legally cast.

GREENE COUNTY.

The evidence in respect to the election in this county discloses a wholesale attempt at fraud perpetrated by the friends of the contestee (sitting member) such as would never be tolerated in any State where the people have the power to protect themselves.

The governor had ordered a new registration, but none was made; the election was conducted under the existing registration; the returns were regularly made to the clerk, one E. R. Seeley; he says he refused

to receive them because the new registration had not been made, and he did not conceive the election legal; the returns were, however, deposited in a book in the clerk's office, and the night before, third day after the election, the box and returns were stolen from his office, and have never been seen since. The law of Arkansas requires that the judges of elections shall keep two poll-books, one of which to be returned to the clerk and the other retained by the judges. After the returns were stolen from the clerk's office, Mr. Gause procured copies from the judges, certified by them and United States supervisors, which were filed with the clerk, were canvassed, compared, and counted by him, and the following certificate made by him:

No. 7.—*Exhibit B to deposition of Frank Strong.*

STATE OF ARKANSAS,
*County of Greene:*

I, Ezekiel R. Seely, county clerk and *ex-officio* clerk of the county court within and for said county and State, do hereby certify that at the general election held in the several voting-precincts in said county on Tuesday, the 5th day of November, 1872, the following-named persons received the number of votes set opposite their respective names for the office of Congressman of the United States from the first Congressional district of Arkansas, viz:

Lucian C. Gause received 734 votes.

Asa Hodges received 25 votes.

In testimony whereof I have hereto set my hand and affixed the seal of said county this 11th day of November, 1872.

[SEAL.]

E. R. SEELY,
*County Clerk of Greene County, Arkansas.*

The testimony of Wyse (p. 167) and of Crowley (p. 157) proves a fair election. The majority of the committee agree with us that the governor had no power to set aside the registration, and that the election was properly held under the existing registration, and count the votes from Bradshaw, Cache, Johnson, Salem, and Saint Francis precincts, which gave Gause 320 votes and Hodge none, but refused to count the vote from the other five precincts, because Mr. Gause did not produce duplicate poll-books of the election. We submit that after the returns were stolen from the clerk's office, the next best evidence was the certified duplicates returned to the clerk; these were "accepted and acted" on by the clerk when he made the abstract, and his certificate of the vote of this county ought to be as weighty as the certificates made by the clerks of Van Buren and Conway. The law requires the duplicate poll-books to remain in the custody of the judges, and surely it will not be denied that a legal official custodian of a document can authenticate a copy of it and make it evidence, and the value of that evidence is enhanced by the certificates of the United States supervisors. The sitting member has not offered a word to impeach the perfect fairness of these returns, and we insist that the votes of the other five precincts should be counted; these gave Gause 414 votes and 25 for Mr. Hodges.

POINSETT COUNTY.

There are five townships in this county. The election was fairly held in all of them. The returns were made to the clerk, and were stolen from his office on the Friday night after the election. The judges made certificates under oath in each precinct. These were presented to the clerk, and he made the following abstract and certificate.

*Abstract of election-returns from Poinsett County for * * * members of Congress, * * * election November 5, 1872.*

| Precincts. | Congress, first district. | |
|---|---|---|
| | L. C. Gause. | Asa Hodges. |
| Bolivar | 114 | 21 |
| Scott | 64 | 52 |
| Greenfield. No certificate has been had | | |
| Little River | | |
| West Prairie | 3 | 7 |
| Total | 181 | 80 |

STATE OF ARKANSAS,
*Poinsett County:*

I, John T. H. Major, clerk of the county court for Poinsett County, do hereby certify that the above is a correct copy of the abstract of votes given for the persons therein named at the general election held in said county November 5, 1872, as made up by certificates of judges from the above-named precincts under their oaths.

Witness my hand and official seal this 30th day of November, A. D. 1872.

[SEAL.] JOHN T. H. MAJOR,
*Clerk of Poinsett County.*

This was forwarded to the secretary of state, and he *accepted it, acted on it*, and counted the votes for Mr. Gause. The committee change their opinion of the conclusive effect of a certificate that has been "accepted and acted on by the State authorities," and refuse to count the vote of this county. The testimony on which the certificate was based was the best attainable after the returns were stolen from the clerk's office, was legally secondary evidence, and the committee ought to have followed the "State authorities" and given Mr. Gause the vote of this county.

## INDEPENDENCE COUNTY.

*Christian.*—After the close of the polls, and before the canvass of the votes, 10 ballots cast for Mr. Gause were fraudulently removed from the box, and 10 ballots bearing the name of Mr. Hodges substituted for the same. (W. McCulloch, 100.) Mr. Gause is entitled to 20 additional majority by reason of this fact.

*Big Bottom.*—Mr. Gause received 43 votes at this precinct, all of which were suppressed by the judges. (A. S. Stone, 91; C. J. Washburn, 93; R. C. Bates, 94.)

Of votes *actually cast* in this county, therefore, 53 are to be added to the aggregate of Mr. Gause, and 10 votes are to be deducted from the vote of Mr. Hodges.

The true vote of Independence County is, then—

| | |
|---|---|
| For Mr. Gause: | |
| Governor's proclamation | 585 |
| Big Bottom | 43 |
| Cleveland | 10 |
| Total votes actually cast | 638 |
| Add "outside polls" | 123 |
| Total | 761 |
| For Mr. Hodges: | |
| Governor's proclamation | 769 |
| Deduct Cleveland | 10 |
| | 759 |

The committee, doubtless by oversight, omitted to mention this county, and probably do not disagree, as the evidence is entirely satisfactory and uncontroverted.

The committee, by their count, give Mr. Gause 13,231, Hodges 14,374. To this should be added the following:

| County. | Gause. | Hodges. |
|---|---|---|
| Marion | 176 | ..... |
| Van Buren | 386 | 77 |
| Conway | 805 | 421 |
| Poinsett | 181 | 80 |
| Greene | 414 | 25 |
| Independence | 63 | ..... |
| | 2,025 | 603 |
| Vote counted by the committee | 13,231 | 14,374 |
| Total vote | 15,256 | 14,977 |
| | 14,977 | |
| Majority | 279 | |

"OUTSIDE POLLS," SO CALLED.

*Independence, Jackson, and Woodruff Counties.*—We now come to the votes of qualified electors cast for Mr. Gause in these counties at what Governor Baxter terms the "outside polls," held under the constitution and laws of the State of Arkansas and of the United States. At these polls there were polled, counted, and returned the following votes:

| Locality. | | Gause. | Hodges. |
|---|---|---|---|
| Jackson County: | | | |
| Jefferson precinct | | 246 | 4 |
| Independence County: | | | |
| Washington | 27 | | |
| Batesville | 51 | | |
| Big Bottom | 17 | | |
| Christian | 28 | | |
| | | 123 | ..... |
| Woodruff County: | | | |
| De View | 106 | | |
| White River | 38 | | |
| Freeman | 11 | | |
| | | 155 | ..... |
| Total | | 524 | 4 |

These votes ought to be counted for Mr. Gause and Mr. Hodges respectively.

Take for an example the vote of Jefferson precinct, Jackson County. It will illustrate the entire case so far as this point is concerned. Section 4 of the act of July 23, 1868, provides as follows: "*The board of registration* for each county, immediately before such (general) election, shall appoint three discreet persons *in each election district having the qualification of electors*, to act as judges of election within the election-district, and the judges so appointed shall select two persons having the like qualifications to act as clerks thereof." Section 6 provides that the judges so appointed shall continue to act until the next general election. Section 15 of the registration act approved July 15, 1868, a part of which, affecting the appointment of judges of election, was repealed by the act

of July 23, 1868, provides as follows: "If the persons so appointed (judges) fail to act, the *qualified voters when assembled* shall have power to appoint some qualified elector to act in place of the person or persons so failing to act as judge or judges of election."

There were two polls held at Jefferson precinct. The judges of one poll were William A. Monroe, H. T. Hart, and Richard Scott; of the other were Lowry Grant, Stedman R. Tilghman, and Albert W. Huit; and the poll held by the last-named judges seems to have been the only legal poll for that precinct. It is called an "outside poll" because it was unacceptable to the men who had conspired to carry the election by fraud. The election-law requires the board of registration to appoint the judges of election, who are to open the polls at 8 a. m.; and in case of their failure to act and to commence the election at that hour, the qualified voters present may elect the judges. The board of registration did not appoint Monroe, Hart, or Scott. They were not elected or appointed by the qualified voters present at 8 o'clock. Monroe himself testifies (p. 52) that W. J. Scott *appointed* the judges of that poll; and A. I. Wolf (p. 43, and Ex. B, p. 86) shows that no *judges* of election were appointed by the board of registration. These judges were not chosen by the people. They were, therefore, not legally elected judges. On the other hand, Grant, Tilghman, and Huit were duly elected by the lawful voters present, no regularly appointed judges appearing; and they appointed the clerks. All of the judges and clerks were qualified electors, and were sworn according to law. The polls were opened by the sheriff at the usual place of voting in due form. The usual ballot-box was used. None but qualified electors were permitted to vote. Order was preserved. The polls were closed in due form at sunset and the votes counted, certified, and returned, as the law requires. (W. R. Jones, 19; C. Minor, 26; T. H. Phillipps, 71; and Ex. A, p. 73.) By the return Mr. Gause received 246 and Mr. Hodges 4 votes, which the clerk refused to count.

It is claimed by Mr. Hodges that the election held at the Grant, Tilghman, and Huit polls was illegal, because the judges had no precinct-books of registration. But the judges of the Monroe, Hart and Scott polls had no such books.

Section 14 of the act of July 15, 1868, provides that the registrars shall deposit the original book of registration with the county clerk, to be by him preserved as a record of the county.

Section 6 of the act of July 23, 1868, provides as follows:

> The *clerk of the county court* (shall) make out and deliver to the *sheriff* of the county suitable blank poll-books, and *also the registration-books* of each election-precinct in his county, and it shall be the duty of the sheriff forthwith to deliver such books to the judges of election within the respective election-districts to which such books belong.

The county clerk made no such copies for any judge, and it is not pretended that any such were used. The book used by Monroe was not copied by the county clerk from the original registration-book, but was made by Monroe himself from "loose slips of paper" furnished by William J. Scott, one of the registrars. It was a copy of nothing; it was a fraudulent device of Monroe and Scott. The names were furnished by Scott, written down by Monroe, and afterward submitted to Scott for "comparison, correction, and addition." Monroe himself (p. 49) testifies to this, and also that after delivering this book to Scott on the 26th day of October, *two days after the registration had closed, and the board of review adjourned*, and the book had been signed and certified by Scott and Faulkinburg, 32 names were added to the list. (See also pp. 68, 69.) Besides, the pretended precinct-books did not correspond

(p. 52). Was that so-called precinct-book of any validity at all in determining who were qualified electors of that precinct?

The election held by Grant, Tilghman, and Huit was conducted as nearly in accordance with the election law of Arkansas as it was possible for qualified electors arbitrarily disfranchised without the shadow of law or justice, by the action of a partisan registrar, to conduct an election. The judges had no "precinct-book," neither did the judges at the other poll. I submit that the people cannot be disfranchised by the failure of a registrar or county clerk to do his duty. If either poll is to be rejected, it must be the Monroe, Hart, and Scott poll, although in the foregoing statement above I have given Mr. Hodges the benefit of this and every other vote claimed by him in these three counties.

Section 2, article VIII, of the constitution of Arkansas prescribes the qualifications of an elector. Section 3 indicates the disqualifications. Registration is not required by section 2, and the want of registration is not made a disqualification by section 3. The registration prescribed by the act of July 15, 1868, cannot be either a qualification or a condition for voting under the constitution. But the act does not purport to provide that persons *shall not* vote unless registered.

But if it were absolutely necessary to register before voting, it certainly could not be claimed that a single registrar could, secretly, without notice to the party concerned, erase the name of a registered voter from the original book of registration, and withhold it from the precinct-book, and thus disfranchise the people at his pleasure. This would be a dangerous power, even though lodged in pure hands; but in the hands of such men as the sitting member's partisans, it could not fail to become an engine of oppression.

Section 9 of the act of July 15, 1868, is in these words: "The registrars shall issue a certificate to every person who is found to be a qualified elector, showing that said elector is entitled to vote *until his certificate is revoked by the board of review.*

A registrar has no authority under this act to revoke a certificate of registration or disfranchise an elector by erasing his name from the book.

In Jackson County about 1,200 were registered (p. 7), and H. N. Faulkinburg, a Republican, and one of the registrars of that county, testifies (p. 70) that about one-half that number, all Democrats, were erased, some by Scott and some by Tatman.

At least 50 certificates were issued by Scott, and 32 names added to the Jefferson precinct-book, all Republicans, by Scott, after the board adjourned (pp. 68, 69), in gross violation of law.

This argument applies also to Independence and Woodruff Counties. The proof respecting Independence County will be found in the depositions of J. Campbell, 88; R. Neill 95–97; W. H. Pickett, 89, &c.; C. J. Washburn, 93. The proof relating to Woodruff County will be found in the depositions of A. C. Pickett, 132: W. P. Campbell, 135; A. W. Jones, 138; W. J. Thompson, 140.

Counting these votes, the result will be as follows:

| | | | |
|---|---|---|---|
| Gause | 15,256 | Hodges | 14,977 |
| Add outside polls, Gause | 524 | Add outside polls, Hodges | 4 |
| Total | 15,780 | | 14,981 |

| | |
|---|---|
| Vote for Lucien C. Gause | 15,780 |
| Vote for Asa Hodges | 14,981 |
| Majority for Gause | 799 |

In conclusion, we invite attention to the evidence in regard to the election in the county of Crittenden. By the census of 1870 the population of this county were 3,831 souls; in 1872 there were given 2,183 votes, of which Mr. Hodges claimed to have received 1,889. This is certainly a very uncommon ratio of voters to the population, strongly indicating fraud.

In Burnt Cane precinct there was but one tax-payer, and that one a woman; yet 122 votes, solid for Mr. Hodges, are claimed to have been cast.

EDWARD CROSSLAND.
R. M. SPEER.
L. Q. C. LAMAR.

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## SHERIDAN vs. PINCHBACK.—REPRESENTATIVE AT LARGE FROM LOUISIANA.

Conflicting returns of the election, and question raised as to which of the five boards constituted the legal returning-board authorized by law to canvass the returns and promulgate the result.

The charges that the votes of six parishes were illegally excluded from the count were not sustained by evidence.

The committee unanimously decided that the contestee, Pinchback, was not elected.

Majority and minority report submitted.

Majority report adopted March 3, 1875: Yeas, 121; nays, 29.

George Sheridan sworn in March 3, 1875.

Authorities referred to: Cushing's Law and Practice of Legislative Assemblies; American Law of Elections.

February 24, 1875.—Mr. Harrison, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the contested election case of Sheridan vs. Pinchback, from the State of Louisiana, submit the following report:*

When this contest was first presented to the committee, the contestee, Pinchback, rested his case upon the canvass of the board known as "the Lynch board." Upon examination the committee were satisfied that the Lynch board made its canvass without the presence of any primary statements of election or official data, and which the committee deemed insufficient to show his title to the seat claimed by him.

The contestant, Sheridan, presented no proof in support of his claim to the seat, except that embraced in Senate Report No. 457, Forty-second Congress, first session, which was a report of a Senate committee in a contest to which neither the contestant, Sheridan, nor the contestee, Pinchback, were parties. This proof the committee, as will be seen by reference to their report at last session, deemed insufficient, and reported to the House a resolution authorizing the parties to take further testimony in support of their claims, respectively, which resolution was adopted by the House.

Under this resolution the contestee, Pinchback, failed to take any testimony within the time given in the resolution, and was enabled only by the consent and courtesy of the contestant, who extended his time twenty days, to take any proof. The contestee has shown a marked indifference in the contest. He originally failed to make answer to the

notice of contest. When, at the last session, time was given him in which to take proof, he failed to take it within the time, and at this session has failed to appear before the committee, either by himself or his attorney, although notified so to do. In the testimony he has submitted, taken under the resolution of the House at last session, he has not attempted to strengthen his original claim—that the Lynch board was the valid returning board—but the proof taken by him has been confined to an attempt to show fraud in the election sufficient to overturn the claim of contestant, based upon the legal returns of the election.

The contestant has taken his testimony within the time prescribed by the resolution of the House, and seems to have been diligent in his efforts to show his title to the seat he claims. This is a contest on the merits, and we are to determine the simple question as to who received a majority of the legal votes at the election. The contestant, as is shown, having made diligent effort to have the original returns produced before the committee, is entitled, in the absence of the returns themselves, to the next best evidence of what they show.

We believe, from the additional evidence submitted to the committee, that we are now in possession of information relative to the election which will enable the House to determine the pending contest satisfactorily and equitably.

The present contest does not, either necessarily or actually, involve the so-called "Louisiana question," or settle the matter at issue *pro* or *con* of the legality of the present State government of Louisiana, as will appear from the several considerations suggested by the facts and testimony before the committee.

First. The contestant was a Liberal Republican candidate, and received, in addition to the full strength of the vote of what was known as the "Fusion party," a large Republican vote.

Second. Mr. Pinchback received, as the returns of both the Forman and Lynch boards show, from two to four thousand votes less than were received by the candidate for governor on the same ticket, and his vote is not a fair measure of the strength of State officers in the election of 1872.

Third. The act of Congress providing for United States supervisors of election (both political parties being fairly represented in the conduct of this election) and empowering them to exercise such supervision in the matter of registration of voters, and in the casting and counting the ballots and all the details of the election until the result thereof should be officially known, threw such safeguards around the election of Congressmen as did not exist in the case of State officers, and as practically rendered any material fraud in the case of the election of Congressman impossible.

It appears in evidence that these United States supervisors faithfully executed their duties without hinderance in these particulars, so that the fraud that was possible under the power of the State registrars, and that was evidently suggested and contemplated in the written instructions given by Mr. Blanchard to his subordinates relative to the counting of the vote for State officers, was impossible in counting the votes cast for candidates for Congress.

These several considerations, in the judgment of the committee, so far separate the decision of this contest from the settlement of the question of the election of State officers in Louisiana, as to place the former not only on an independent basis, but to render it both inexpedient and unfair to complicate the question under consideration by any of the mat

ters or issues belonging exclusively to the State government of Louisiana, nor do we feel called upon in this connection to express an opinion upon the status of the existing State government in Louisiana or the merits of the so-called Louisiana question. This case being before the committee on its merits, we are to decide upon the evidence before us who received a majority of the votes legally cast for the parties respectively.

An election for Congress for the State at large was held, under the forms of law and at the time required by law. The returns of the election were made to the governor, who, under the law of that State, was the proper officer to whom the returns were to be made. The election, so far as that of selecting Representatives in Congress was concerned, was conducted, as the proof shows, in the presence and under the supervision of supervisors appointed under the act of Congress. These returns of the election, in the hands or in custody of the governor, were placed in the possession of a returning board, and in the unfortunate conflict which took place as to who constituted the legal returning-boards, authorized by law to canvass the returns and promulgate the result, they passed into the hands of several different returning-boards, and are now said to be in the possession of John McEnery, claiming to be governor of Louisiana. If there had been no contest as to what returning-board should have canvassed the returns and decided the result, and the returns were before the committee, these returns would constitute the best, the highest evidence of what these returns show, and of the fact of who was elected. These returns, however, not being before the committee, and the contestant in this case having used all due diligence to have them produced, and failing, we think he is entitled to secondary evidence of what these returns show.

There can be no doubt that the original returns of the election of 1872 were in possession of and canvassed by the board known as "the Forman board."

On this point the contestant submitted the following proof:

As will appear in the additional evidence submitted by him, under the resolution of the House, he sought to trace up and possess, for the purposes of testimony, the original *primary returns* made to the State executive, and subsequently produced before the Committee of Privileges and Elections of the Senate.

In furtherance of this end, Governor Warmoth, Mitchell, Mr. Forman, Mr. Austin, Mr. Wharton, and others were summoned as witnesses; and John Lynch's testimony before the Senate committee was, by consent of parties, accepted and filed; and the following facts were brought out, as will appear by reference to the evidence submitted by the contestant: Governor Warmoth swears he received returns of the election of November, 1872, from all the parishes of the State but two (page 141), and that he opened them in the presence of the Wharton board (not denied by Pinchback or attempted to be disproved). He also swears (page 495) that the returns were delivered by him to the De Ferriet board. I. E. Austin swears (page 4 of additional testimony) that the board of which he was a member, viz, the De Ferriet board, received the returns from Governor Warmoth or the Wharton board, and afterward transmitted them to the Forman board just as they had been received. Archibald Mitchell, a member of the Forman board, swears (page 699 Senate Report) that he received the returns from the De Ferriet board. Forman swears to the same effect (pages 75 and 76 Senate Report). None of the above facts are denied by Mr. Pinchback, nor does he in any manner attempt to disprove them. Upon page 7 of additional testimony it is admitted by Mr. Pinchback that the returns of the election of 1872 are now in the hands of John McEnery, of Louisiana. The chain of testimony is complete concerning the returns.

First Warmoth, second the Wharton board, third the De Ferriet board, fourth the Forman board, had them in their possession; and, fifth, John McEnery received and now holds them. In answer to questions by Senator Morton, Governor Warmoth testified as follows (see Senate Report, page 141):

"Q. Governor, those official returns were received by you?—A. Yes, sir.

"Q. Sealed up?—A. Yes, sir.

"Q. I will ask when those returns were opened, and by whom?—A. They were opened by me on the 14th day of November, *in the presence of the board of returning-officers, consisting of myself, the acting secretary of state, Mr. Wharton, and Mr. Da Ponta and Mr. Hatch.*"

Assuming that the original "primary returns" made to the governor from all the parishes of the State but two were received by him, opened by him in the presence of the Wharton board, delivered by him to the De Ferriet board, and transmitted to the Forman board *just as they had been received* (and these facts the additional proof shows), we are to look to what these returns show. They show that contestant Sheridan received 65,016 votes, and contestee Pinchback 54,402 votes.

As to the correctness of this tabulation, we have the sworn testimony of Mitchell, Forman, and Thomas, a majority of the board; and, in addition to this, the admission of the contestee (page 3 of additional testimony) that it is a compilation of the returns before the Forman board is conclusive.

They show a majority of 10,614 for contestant. The contestee, however, objects to this compilation of the Forman board, first, because six parishes were omitted in the compilation, and, secondly, because of alleged frauds in connection with the election throughout the State, including frauds in the city of New Orleans.

While Mr. Pinchback offers no evidence to show that the six parishes were illegally excluded from the count, still if they were illegally excluded it could not affect the result, as will be seen from the following statement:

First. Complete the Forman returns by supplying the omitted parishes, to wit Iberia, Iberville, Saint James, Saint Martin, Saint Tammany, and Terre Bonne, by the returns of 1870:

| | |
|---|---|
| Pinchback increases 54,402 by 6,401 | 60,803 |
| Sheridan increases 65,016 by 3,644 | 68,660 |
| It would leave Sheridan a majority of | 7,857 |

Or,

Second. Supply the omitted returns in the aforesaid six parishes by the returns of 1874:

| | |
|---|---|
| Pinchback increases 54,402 by 7,406 | 61,808 |
| Sheridan increases 65,016 by 4,842 | 69,858 |
| Sheridan's majority would be | 8,050 |

Or,

Third. In lieu of either of the returns of 1870 or 1874 for the omitted parishes above, take the average of the two years:

| | |
|---|---|
| Pinchback increases 54,402 by 6,903 | 61,305 |
| Sheridan increases 65,016 by 4,243 | 69,259 |
| Sheridan's majority would be | 7 954 |

Or, supplying the omitted parishes from the returns of the Lynch board on which contestee relies, Pinchback increases 54,402 by 7,420=61,822; Sheridan increases 65,016 by 4,248=69,264; leaving Sheridan a majority of 7,442.

Next, is there sufficient proof presented by contestee of frauds in the election for Congressman at large in 1872, in Louisiana, to destroy contestant's majority?

The principal witnesses relied upon by the contestee to prove these frauds were B. P. Blanchard, State registrar of voters, Catlin, Long, Downes, and Cary.

The affidavits of these parties, *taken ex parte*, were filed by contestee before the adoption of the resolution by the House at last session, and with the design of impeaching the correctness of the action of the Forman board. They were not received by the committee as competent or conclusive proof of the facts therein recited or the statements therein

made, but only as raising a suspicion of fraud, and suggesting the propriety of an investigation of the question of fraud before a final determination of the questions in this contest could be properly made by the committee.

The evidence shows that Blanchard subsequently appeared before the judge taking the testimony in this case, reaffirming in general terms the correctness of the statements embraced in his affidavit; but Mr. Pinchback did not attempt to confirm Blanchard's testimony by examining his subordinates and co-laborers in the alleged frauds to corroborate his (Blanchard's) statements. Nor did any other witness appear and give testimony that amounts to corroboration of the statements in Blanchard's affidavit. It appears that counsel for contestant Sheridan excepted to the reception of both Blanchard's affidavit and testimony, and also the affidavits of Long, Catlin, Cary, and Downs. The committee, while receiving the testimony for what it is worth, regard it, under the circumstances, as discredited and rebutted in so many particulars as to make it of little value in the determination of the contest, because it appears in evidence that these witnesses, acting under their official oaths, affirmed the fairness and validity of the returns they seek to impeach by their *ex parte* affidavits made subsequently. They are shown to have been engaged in trading on their own official corruption, and influenced by promises of money, offices, and immunity from criminal prosecution. Besides, their statements are incredible, because of the safeguards thrown around the election of Congressmen by the act of Congress of May 30, 1870, and the amendments thereto, creating and defining the powers of United States supervisors, and because of strong rebutting testimony from at least two-thirds of said supervisors, filed before the committee at last session. Still further, the affidavits and testimony referred to in this connection are so general and indefinite as that, while they may suggest a suspicion of fraud, they cannot be considered and used in determining the relative number of legal votes cast in the election.

The committee in the report on this case at the last session, in which the propriety of taking additional testimony was suggested, deemed it prudent, out of abundant caution, to suggest an investigation of the question of fraud in twelve parishes, the returns whereof showed a large discrepancy between the returns of the Lynch and Forman boards, and which were singled out by contestee as parishes in which frauds had been committed. The contestee has utterly failed to show by proof that any such frauds as he alleged were perpetrated in these parishes. In fact, he has submitted no testimony in relation to any irregularity in the conduct of the election except in the parishes of Saint Charles and Natchitoches.

Under these circumstances the committee do not feel justified in calling in question the results arrived at by a canvass and compilation of the returns in these parishes, especially as it will be seen that, if the returns of 1874 are substituted for the returns of 1872, or the average vote for 1870, 1872, and 1874 taken in lieu of the Forman board returns of 1872, the contestant would still be elected by a large majority, as will be seen from the following calculation:

First. Substitute in the twelve parishes the returns of 1874, to wit, Pinchback 12,556, Sheridan 11,492, for the returns of 1872, to wit, Pinchback 8,421, Sheridan 14,208, and the respective aggregate vote for the State would stand:

| | |
|---|---|
| Pinchback | 58,437 |
| Sheridan | 62,300 |
| Sheridan's majority | 3,863 |

Second. If, in lieu of the returns of 1872 and 1874, we take the average returns in the twelve parishes for the years 1870, 1872, and 1874, to wit, Pinchback 12,121, Sheridan 12,413, we have the aggregate result of the State vote, on this basis of average, as follows:

| | |
|---|---|
| Pinchback | 58,202 |
| Sheridan | 62,221 |
| Sheridan's majority | 4,029 |

The contestant, Sheridan, however, is clearly entitled to have this contest decided on what is shown in the record *in this case*. The additional testimony taken by contestee, Pinchback, is in relation to the vote in Saint Charles and Natchitoches.

It will be seen that Pinchback claims 1,000 majority in the parish of Natchitoches, which would give him 2,245 votes in that parish less 547 votes already given him in the Forman returns, or an additional vote of 1,698. In the parish of Saint Charles, contestee, Pinchback, claims 842 votes more than were given him in the Forman returns, or in these two parishes 2,540 votes, which should be credited to him, assuming that they are proven, although he introduces only one witness to prove the vote in each parish.

But adding this 2,540 would make his vote 63,846 to Sheridan's 69,259, which stilll eaves Sheridan a majority of 5,413, unless there were frauds proven in New Orleans sufficient to destroy this majority.

The witness, and the only one relied upon in this case to prove frauds in New Orleans, was B. P. Blanchard. He is discredited by Warmoth, Helburn, and Swords, as well as by the fact that he, with the most brazen effrontery, admits that, in violation of his official oath and duty, he undertook to secure the election of State officers without any regard to fairness in the management of the election; for it will be seen from the record that while he seemed to be willing to admit that the United States supervisors had the right to supervise the election as to Presidential electors and members of Congress, he instructed his subordinates as follows:

[Confidential.]

Mr. ———, *Supervisor of registration, parish of* ———:

In addition to the instructions contained in circular No. 8 from this office, you are instructed—

I. In counting the ballots after the election, *count first the votes cast for Presidential electors and members of Congress*, keeping separate tally-lists on the form (No. 1) provided for that purpose, and making up and completing the statement of voters for each poll, upon Form No. 1; then close the box, reseal it, and proceed in a similar manner until all the national vote has been counted. Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals *have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish vote.*

II. As soon as the count in each case is completed telegraph the result to this office at once; should there be no telegraph office at the court-house, dispatch a messenger by the quickest route to the nearest telegraph station.

III. The stationery, &c., furnished for each parish is to be equally distributed among all the polling-places, and at least one copy of the election laws must be furnished to each poll.

Respectfully,

B. P. BLANCHARD,
*State Registrar of Voters.*

And he admits that he fraudulently and corruptly gave instructions to his subordinates, the substance of which is shown from the following extract from his own statement:

Deponent further says that he issued from time to time circulars of instructions to supervisors and assistant supervisors of registration for their observance and guidance, copies of which are hereto annexed and marked CC, CD, CE, CF, CG, CH, CI, CK, and in addition thereto, with a view of preventing the United States supervisors of election and other

officials appointed and acting under the enforcement acts of Congress from taking any cognizance whatever of the results of the election for State and parish officers, he issued to al supervisors of registration a confidential letter of instructions, hereto annexed and marked CL, which, for greater security and secrecy, he caused to be sent to them by the hands of trustworthy agents, who were previously instructed by him as to the details necessary to be worked up to accomplish the object aimed at, namely, the success of the Fusion ticket at the general election; and that he prepared and supplied to the surpervisors and assistant supervisors of registration throughout the State two sets of blank forms of tally-sheets, statements of votes, &c., one set of which was to be used for returns for Presidential electors and members of Congress, and the other for State, parish, and municipal officers only, with the intent of so manipulating the vote for the latter candidates that those running on the Fusion ticket should be returned and declared elected in parishes where the vote showed a majority cast for the Republican candidates for Congress and Presidential electors.

And this serves to confirm the view we have taken, that the Congressional vote, under the supervision of United States supervisors, was at least counted fairly.

The committee have decided unanimously that the contestee, Pinchback, was not elected. The report of the majority of the committee at the last session, prepared by the chairman of the committee, on the point as to the election being a fair one, is as follows:

They do not feel at liberty to report, upon the evidence before them, that this seat is vacant. The registration, election, and returns were fair and honest, as they believe, in some, if not in a majority, of the parishes of the State.

There is certainly nothing in the additional testimony taken in this case showing that the seat is or should be vacant, and nothing additional challenging the fairness of the election.

We therefore recommend the adoption of the following resolutions:

1. *Resolved*, That P. B. S. Pinchback was not elected a member of Congress from the State of Louisiana from the State at large in the Forty-third Congress.

2. *Resolved*, That George A. Sheridan was duly elected a member of Congress (for the State at large) from the State of Louisiana, in the Forty-third Congress, and is entitled to his seat.

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## VIEWS OF A MINORITY.

Mr. H. Boardman Smith submitted the following as the views of a minority:

The undersigned members of the Committee of Elections, in the contested-election case of Sheridan *vs.* Pinchback, for a seat in the House as Representative at large from the State of Louisiana, submit the following as the views of a minority.

Upon the consideration of this case at the last session, the committee reported in part as follows:

### FIRST.

Is Mr. Pinchback shown entitled upon the merits to this seat?

Your committee think not. Mr. Pinchback's original certificate, it was conceded, and Governor Kellogg's supplemental certificate, it is to be assumed, were issued upon the pretended canvass by the returning-board known as the "Lynch board." Assuming that the Lynch board was the legal returning-board, and waiving the consideration of the effect of Mr. Pinchback's default in making no response to Mr. Sheridan's notice of contest, your committee are of opinion that the fact that the Lynch board never had possession of the election-returns, and therefore never canvassed them, has become a part of the political history of the country. They hold this fact to be so notorious that the House ought to take legislative notice of it in this contest, and may take like notice of it for the purpose of any appropriate legislation. They report, therefore, that upon the case as presented to your committee, Mr. Pinchback is not shown to be entitled to a seat in this House.

SECOND.

Upon the case made, ought Mr. Sheridan to be seated?

He served upon Mr. Pinchback, in due time, his notice of contest, to which Mr. Pinchback never made answer. Nevertheless his case is no stronger in the judgment of the committee than if no one were contesting his right, and the committee had been instructed by order of the House to inquire whether he was elected. He has presented no proof of his election other than his certificate and the printed volume of testimony taken in the last Congress by the Senate Committee on Privileges and Elections in the contest between Ray and McMillan for a seat in the Senate.

Mr. Sheridan's certificate is as follows:

"STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
"*New Orleans, December* 4, 1872.

"This is to certify that at a general election held in this State on the 4th day of November, A. D. 1872, George A. Sheridan received sixty-four thousand and sixteen votes and P. B. S. Pinchback received fifty-four thousand four hundred and two votes.

"I therefore hereby declare George A. Sheridan duly elected to represent the State of Louisiana, as Congressman at large, in the Forty-third Congress of the United States.

"Given under my hand and the seal of the State this 4th day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

"H. C. WARMOTH,
"*Governor of Louisiana.*

"JACK WHARTON,
"*Secretary of State.*"

Mr. Sheridan claims that the testimony taken by the Senate committee shows his election and that the House ought to receive it, and give it like force and effect as if it had been taken in the pending contest.

First. As to the certificate. Waiving the question whether in any case a governor's certificate alone is sufficient proof *upon the merits* of title to a seat in the House, it seems clear to your committee that its effect as proof rests upon the presumption that it is the official declaration of an official canvass of the votes.

But Mr. Sheridan concedes that on the 4th day of December, when his certificate was issued, the Congressional vote had not been canvassed by any returning-board whatever. This fact was also proved before the Senate committee (page 584).

Second. Mr. Sheridan's case, then, rests upon the validity and effect of the return of the Forman board, found on pages 82 and 83 of the Senate report, for there is no other proof of his election. This is the only board which has returned Mr. Sheridan as elected to Congress. The history of the several returning-boards will be found on page 6 *et seq.* of the Senate report. There were—

1. The board in office on the day of the election.
2. The Wharton board, acting with Governor Warmoth after the split in the board.
3. The Lynch board, held by the State courts to be the legal returning-board under the old election law, in place of the Wharton board.

The De Feriet board, appointed by Governor Warmoth ("to escape the clutch of Judge Durell"), under the new election law, approved November 20, 1872.

5. The Forman board, elected by the McEnery senate, December 11, 1872, under the new election law, in place of the De Feriet board, appointed during the recess of the legislature.

The House must determine, then, whether this volume of testimony, taken by the Senate Committee on Privileges and Elections, is competent evidence in this contest (for there was no other proof before your committee of the return of any board).

In Cushing's Law and Practice of Legislative Assemblies, the author states:

"143. The rules of evidence by which courts of justice are governed, and by which their proceedings are regulated, in the investigation of the cases which come before them, make a part of the civil right of the citizen as much as the rules regulating the acquisition, the enjoyment, or the transmission of property, or which govern any other matter of civil right; and when a question of the same nature is pending in the legislature, involving private interests only, no good reason can be assigned why the rules of evidence should not be the same. It would seem reasonable, therefore, to regard it as a rule of parliamentary practice that when the private interests of individuals are the subject of investigation, or, in other words, where the investigation is a judicial one, and so far as it is of that character, the same or analogous rules of evidence should be applied as would be observed in the investigation of similar interests in any of the courts of law or equity; and this appears to be the rule which has prevailed in modern times. On the occasion of what is called the Queen's trial, which took place on a bill of pains and penalties pending in the House of Lords, the rules of evidence were strictly observed.

"44. Where the subject under investigation is not of a judicial nature, no other rule can be given as to the kind or degree of evidence to be required than that it should be such as to satisfy the mind and conscience of individual members, and afford them sufficient ground for belief and action in reference to their own private affairs."

The same author says, in a preceding chapter:

"210. The same general rules by which courts of law are governed in regard to the evidence in proceedings before them, prevail also in the investigation of cases of controverted elections; but inasmuch as a legislative assembly, touching things appertaining to its cognisance, is 'as well a council of state and court of equity and discretion as a court of law and justice,' the legal rules of evidence are generally applied by election committees more by analogy and according to their spirit than with the technical strictness of the ordinary judicial tribunals."

Again, the author says:

"742. * * * 'Between the highest kind of this evidence and the lowest of that before alluded to, there is, of course, an infinite diversity of degrees of proof, ranging from the one extreme to the other, all of which are receivable and entitled to consideration in parliamentary proceedings according to the nature of the subject-matter to which the evidence is to be applied.

"111. *Of the evidence of common fame.*

"745. In the earlier periods of parliamentary history, when it was more common than it has since been to institute inquiries into the conduct of high officers of state, the evidence of common fame or report was admitted as sufficient ground for an inquiry, though not for a condemnation, provided it 'was a general report or voice of neighborhood,' and not a mere 'rumor, which is a particular assertion from an uncertain author'; and provided, also, that it was not a 'reputation of fame upon a generality,' but 'upon a particular specification.' The evidence of common fame, thus defined and restricted, seems proper to be received, for the purpose merely of founding an inquiry upon it; and such seems to be the effect which has been attributed to it in more recent times.

"747. In addition to what may properly be called evidence, namely, that which is obtained by means of an inquiry instituted by the House or brought forward by a party, all the information of every description which in any way comes into the possession of the House may be regarded as evidence. Messages from the executive, either at the commencement or in the course of the session, documents from the same source, returns from public officers or commissioners either in pursuance of law or of the orders of the House, constitute evidence upon which legislative proceedings may be founded. In regard to the credit which may be due to evidence of this sort, no general rule can be given. The House must judge in each individual case.

"748. It frequently happens that documents received by one house from extraneous sources are communicated to the other, either at its request or voluntarily on the part of the former. Such papers are, of course, to be judged of by the house to which they are sent according to their nature and to the source from which they emanated; they derive no additional weight from the medium through which they come.

"749. The minutes of the evidence taken by one house, upon which a bill or other measure sent to the other for concurrence is founded, are not unfrequently sent to the latter either with the bill or measure in question or at the request of that house. In the latter case, the minutes so sent become evidence in that house to which they are sent. In the latter, they are looked upon not as evidence which may be read and considered as such, but only in the light of an index or memorandum of the names of witnesses and of the statements made by them, to assist the house in its examination."

This volume which Mr. Sheridan offers in evidence is Senate Report No. 457, third session Forty-second Congress.

Neither Mr. Pinchback nor Mr. Sheridan was directly a party to the controversy which was pending in the Senate, and in which this investigation was had: nor was the question as to which of them had been elected Representatives at large from the State of Louisiana directly or indirectly before the Senate committee.

Your committee receive the President's message to the last Congress on Louisiana affairs and the report and accompanying exhibits of the chief supervisors of elections in that State. They also receive this volume of testimony taken by the Senate committee, "for consideration of the nature and degree" of the evidence it contains, and "of the subject-matter to which the evidence is to be applied," or, in the phrase of courts, 'for what it is worth."

There is not a precinct or parish return in the entire volume nor is there parol testimony of the vote which either claimant received. Your committee are satisfied, however, that it comprises correct copies of the returns made by the returning-boards known as the Lynch and Forman boards.

THIRD.

Is the Forman return, then, sufficient proof upon the merits of Mr. Sheridan's right to this seat?

This return gives Mr. Sheridan 65,016 votes against 54,402 for Mr. Pinchback.

For the purposes of this question, let it be assumed that the vote was to be canvassed under the new election law, approved by Governor Warmoth November 20 (p. 62 Senate report), more than two weeks after the election, and not under the old law (p. 47), under which the election had been held and the parish returns made, and the canvassing-board organized for entering upon its duties (as held by the supreme court of Louisiana).

And let it be further assumed that the McEnery legislature was the lawful legislature of Louisiana, and that the Forman board, elected by the McEnery senate, was the lawful returning-board for canvassing these returns.

Nevertheless, your committee are of opinion that the correctness of these returns is challenged by evidence, which shows *probable cause*, abundantly sufficient (certainly more so than common fame, upon which the House might act) to put the House upon inquiry before these returns are accepted as conclusive.

A.

On pages 75 and 76 of the Senate report, it is proved that the Forman board was elected by the McEnery senate on the 11th day of December, and that they received these returns, of which there was such an "immense mass as was perfectly fearful, and would make a man's hair stand on end to look at them" (p. 897). on the evening of the 11th December. Nevertheless, they canvassed them during the evening and made their certificates, bearing that date (pp. 83, 88, 95).

B.

These returns are signed by O. F. Hunsacker and S. M. Todd.

The President's message on Louisiana affairs (Ex. Doc. No 91, third session Forty-second Congress) is, within the authority above quoted, properly before your committee and the House, aside from the fact that it was in evidence before the Senate committee (pp. 180, 305).

On page 123 of this document it is charged that the signatures of Hunsacker and Todd are forgeries, and that they have sworn that they did not sign the return on account of the frauds it contained.

C.

Mr. Southmayd was a McEnery man and a member of the Forman board (Senate Report, p. 140). On page 897 he testifies to his belief that there were from 25,000 to 30,000 fraudulent names on the registration-books.

D.

By the census tables of 1870, population, p. 619, the male white population of Louisiana upward of twenty-one years of age is 87,066; black, 86,913. The same table discloses that of the 87,066 whites about 15,000 are foreigners unnaturalized, *i. e.*, there are in the State 174,187 males, black and white, upward of twenty-one years of age, against 159,001 citizens. There was, therefore, in 1870, unless some blacks were foreigners, a majority of colored over white voters of 15,180.

Mr. McMillen, who was a party to the contest before the Senate committee, elected to the Senate by the McEnery legislature, testified, at p. 273:

"Q. What proportion of the colored vote was cast for the fusion or Greeley ticket, in your opinion?—A. I think a very small proportion.

"Q How many thousand votes were there in the colored vote that voted for Greeley?—A. My impression always has been that there have been about as many colored people who voted in opposition to the Republican ticket from one cause and another as there were of white people who voted the Republican ticket, and that four or five thousand would cover the entire number throughout the State."

Mr. Armstead, the colored candidate for secretary of state on the McEnery ticket, who was active in organizing colored Greeley and Brown clubs, testified, at p. 495, that in Northwest Louisiana, if the colored men voted elsewhere as they did in Caddo, there could not have been less than 3,000 colored votes for the fusion ticket.

Mr. McMillen was thereupon re-examined, and testified, at p. 501:

"By Mr. CARPENTER:

"Q. If the same questions were put to you, would you answer them now the same as you have answered them?—A. As they are down in the record."

On page 871 *et seq.*, J. Q. A. Fellows testified as follows:

Q. In your conversation with leading democrats in New Orleans during the last canvass or two—at the time the fusion was made by Governor Warmoth—state what their calculation was that his accession to the party would be worth to them?—A. I will premise by saying that for several years I have held myself somewhat neutral in politics, waiting for an opportunity to arise when I could unite with one party or another for the best interests of the State; and last spring and summer, when the canvass was approaching and being carried on, there was an effort made by some moderate Democrats and Reformers, and a large number of other people in Louisiana, especially in New Orleans, that stood in the same position with myself, to make a union with the best portion of the Republican party and secure the government of the State in all proper things. A fusion was continually thought of by the

Democrats with the governor. I was solicited time and again, probably by thirty, I think, to join in the movement to make the fusion. During that time, say for two or three months, the whole matter was canvassed over and again. They said that, with the assistance of the governor, or fusion with the governor, they could certainly carry the State against the Republican party, or the custom-house party, or the negro party, as they called it. I thought it could not be done; that he had not votes enough at his command to do it. I understood that he had not over a thousand voters that were his followers. They admitted that there were no more than two thousand; but they said this, that his power, with the assistance of the registration and election laws, was good for twenty thousand votes by his appointing his men, or men who would work in his interest, as registrars, and the manipulation of the registration, and the appointment of commissioners of election, and in placing the election polls, and they thought his influence was good for twenty thousand votes. This was the repeated calculation of every one I talked with that finally went into the fusion party. Others refused to go in, who were called "last-ditch" Democrats, or "straight-out" Democrats; many of them refused to go in the fusion, and many of them voted for Grant and Kellogg who were within my acquaintance. They made the same calculation; there was the calculation of one, two, or three thousand followers, enough to make fifteen or twenty thousand altogether, by what was frequently called in the newspapers and the people of the State "the manipulation of these fingers." When printed, it was put in quotation-marks, "these fingers." This was the common talk of the politicians in Louisiana and in New Orleans, and I agreed with them.

Q. Do you now know that previously to the fusion being created between Governor Warmoth's party and the Democratic party, that the very men who were on the ticket for the State officers for the fusion party—that is, Messrs. McEnery and Ogden, were the men who had denounced Governor Warmoth in the most bitter terms?—A. Until the fusion took place in August, every leading politician, every speaker, and every newspaper denounced him, and any alliance with him, most bitterly. They denounced him in the most bitter language. Some of it was not respectful—not fit to be used. The canvass had already commenced, and Mr. Jonas was the candidate for lieutenant-governor; Mr. Ogden, the candidate for attorney-general; Mr. Ellis, a lawyer, who was expecting to secure some office, I believe, had commenced. There were three, at least, I remember, who had commenced to canvass the State; and commenced by going up the river, and then passing around through the northern parishes, and coming down by Shreveport, and then around by the southern parishes, making a tour of the State. They had reached about the center of the parishes on the Arkansas line, at Mindon, making speeches all the way, when they were met with a telegram at Mindon, and immediately returned, announcing that a fusion had been accomplished. I met them on the street on the day of their return, or it may have been the day after; it was on the day when the ratification of this fusion was advertised to be held in La Fayette Square. I then met Messrs. Ogden and Ellis on the corner of the street, and asked them if they were going to support it. Mr. Ogden was called to one side for a moment. Mr. Ellis said, "I am willing to eat my peck of the dirt, or, perhaps, a bushel, but damned if I can swallow this." He had been asked to speak, but had refused. After this he consented to go in the second canvass which had been arranged by the fusionists—to go around by the southern parishes and come up by the way of the western, and back by the northern and river parishes. I met him—as we go down town frequently to business—and asked him the result. He said he had no doubt from what he had seen on both trips, first and last, that the union or fusion, as he termed it, had lost the Democratic party from ten to twenty thousand votes, actual voters; that all through the northern parishes when he was on his first trip the leading men came out and assured them they could carry the parish by four or five or six hundred, or even a thousand majority; but on their return, coming around the other way, they were obliged to go out and hunt up the leading politicians in the parishes, and they spoke in this way: "Probably we can carry this parish; this one we may lose by a hundred; in this one we probably will not be beaten—may have two or three hundred or four hundred majority at the most," and so on. So that, in his calculation, they lost fifteen thousand votes. As a further loss for the fusion, he said that the leading Democrats would not support any such fusion or go into it. I saw a letter from Ex-Governor Moore, of Alexandria, that he would not even be at the meeting. He is an influential Democrat, as I know, in Rapides Parish. He stated he would not be in the meeting or be introduced to Governor Warmoth, who, he had heard, would be there, and whom he had denounced, as he believed, justly. His partner, Mr. Jonas, who was at that time a candidate for governor——

Mr. RAY. Lieutenant-governor?

The WITNESS. Yes, sir; and was displaced, and Mr. Penn put on the ticket. Mr. Hymans read me a letter; it was from General Moore, denouncing Governor Warmoth. Hymans said his partner, Mr. Jonas, was placed in a delicate position, where he could not say anything; but as for going into this, he would not do it himself and, to my knowledge, he did not make a speech in the whole canvass. A number of leading Democrats in New Orleans—some of the executive committee—after the fusion refused to go in the fusion movement at all, and, to my knowledge, voted for Grant and Kellogg. As soon as the fusion was made, I came out and went into the canvass myself for the Republican party.

E.

The conduct of the State registrar covers the returns with very grave suspicion. He issued to the supervisors throughout the State the following confidential instructions, p. 147:

"[Confidential.]

"Mr. ———, *supervisor of registration, parish of* ———:

"In addition to the instructions contained in circular No. 8 from this office, you are instructed—

"I. In counting the ballots after the election, *count first the votes cast for Presidential electors and members of Congress*, keeping separate tally-lists on the form (No. 1) provided for that purpose, and making up and completing the statement of voters for each poll, upon Form No. 1; then close the box, reseal it, and proceed in a similar manner until all the national vote has been counted. Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals *have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish vote.*

"II. As soon as the count in each case is completed telegraph the result to this office at once; should there be no telegraph-office at the court-house, dispatch a messenger by the quickest route to the nearest telegraph-station.

"III. The stationery, &c., furnished for each parish is to be equally distributed among all the polling places, and at least *one* copy of the election laws must be furnished to each poll.

"Respectfully,

"B. P. BLANCHARD,
"*State Registrar of Voters.*"

He sent Mr. Packard the following letter:

"STATE OF LOUISIANA,
"OFFICE OF STATE REGISTRATION OF VOTERS,
"*New Orleans, November* 2, 1872.

"SIR: In reply to your communication of date, I must respectfully decline compliance with your request to appoint one commissioner of election at each polling-place, from the Republican party, at the general election to be held November 4, 1872.

"In regard to your second request, I have the honor to inform you that the list of polling places in this parish will be published in the official journal and other papers to-morrow, 3d instant.

"Very respectfully,

"B. P. BLANCHARD,
"*State Registrar of Voters and Supervisor*
"*of Registration, Parish of Orleans.*

"Hon. S. B. PACKARD,
"*President State Republican Committee.*"

If these papers be read in connection with the supervisors' exhibits on file with the Clerk of this House, and the affidavit of Mr. Blanchard, the fraudulent purpose which they suggest is demonstrated, so far as it can be by *ex-parte* testimony.

F.

The return by the Forman board of the Congressional vote was separate from the returns of the vote for other officers.

The inquiry of the Senate committee was directed wholly to the other returns.

There is no proof, and there is no presumption, that the correctness of this return was verified by comparison with the parish returns.

* * * * * * *

Their whereabouts since that time have not been often known. It is safe to say, they have not been in the custody of the law. Some of the returns produced before the Senate committee were forgeries, p. 1095.

What credit they would be entitled to, if in evidence, need not be discussed, as not one of them was before the committee.

G.

The polling-places in Louisiana are not fixed by law, and at the election of 1872 they were purposely established at places inconvenient of access, in the Republican parishes, so that in some instances voters had to travel from twenty to forty miles to reach them (pp. 308–310). In some cases no notice was given of their location, and studied efforts were made to keep their location from the knowledge of colored men (p. 308). Supervisors' Ex-

hibit B, on file with the Clerk of this House, abstracts certain proofs transmitted with this report under the following heads:

"Registration.—State supervisor gave no notice where registration would be opened.
"Misconduct of State registrars neglecting or refusing registration.
"State supervisor gave no notice where polls would be held.
"Meager number of polls in parishes.
"United States supervisors threatened and debarred access to and view of polls.
"Intimidation.
"Blacks excluded and whites favored.
"United States supervisors debarred from remaining with box after election.
"Boxes run away with or secreted at close of election.
"United States supervisors threatened and debarred as witnesses of the count.
"Misreading of ballots.
"Evidences of tampering and other frauds."

There is an immense mass of testimony of the character indicated by these headings, which, in the judgment of the committee, cannot be ignored in the disposition of this case.

H.

The affidavit of Mr. Blanchard, to which no objection was interposed by Mr. Sheridan, your committee deem it their duty to communicate to the House. It is annexed as an appendix hereto. Mr. Sheridan furnished the committee with the affidavits of two-thirds (it is said) of the supervisors and commissioners in the entire State, denying any fraud on their part, or within their knowledge; also with other affidavits tending very strongly to show that Blanchard was bribed to make his affidavit. If it was made for a consideration, the credibility of the affiant is no more impeached than by his own confession of crime in the affidavit itself. From the nature of the case, such things as he alleges could not be proved by, because they could not be in the knowledge of, honest men. It is of such a character, in the judgment of your committee, as to demand a most thorough investigation of its truth or falsity before Mr. Sheridan is seated.

I.

But again:

The Forman returns omit six parishes, to wit: Iberia, Iberville, Saint James, Saint Martin, Saint Tammany, Terre Bonne.

Mr. Sheridan challenges a count of these parishes as returned by the Lynch board.

They give Mr. Pinchback an aggregate majority of ..... 3,172

The affidavit of Mr. Blanchard, annexed, states that in the parish of Orleans a fraudulent vote of 6,737 was counted for the Fusion ticket. The Lynch board rejected 1,623 of these fraudulent votes, which Mr. Sheridan proposed to deduct ..... 1,623

The Forman board gave Pinchback in Saint Charles Parish 382 votes, and a majority of 272. But this same board, p. 81, gives Kellogg 1,231; Antoine for lieutenant-governor, 1,224; Deslondes, for secretary of state, 1,226; and Field, for attorney-general, 1,226. The Lynch board, p. 203, gives Pinchback 1,225, just the vote which the rest of the Republican State ticket received there, according to the returns of the Forman board, making his majority 1,080. Moreover, it is proved on p. 148 that the Lynch board had full returns from Saint Charles Parish. This contest should be remanded, then, for further proof, or Mr. Pinchback should be credited with the difference in his favor between the returns of the Forman and Lynch boards ..... 808

In Red River Parish the Forman board gives Mr. Pinchback 211 votes, pages 81, 82. But it gives every other candidate on the Republican State ticket from 913 to 918. The return of the Lynch board, page 203, gives Mr. Pinchback in this parish 911 votes. The De Ferriet board, page 296, gave Blount for senator in the same parish, 911. The Forman board, page 87, gave him 311, and gives Pinchback 211. It seems clear from page 404 that the Lynch board had the full returns from this parish also. The case should be remanded, then, or Mr. Pinchback should be credited with the difference in the returns ..... 650

The census reports of 1870 show the white population of the parish of De Soto to be 5,111; the colored, 9,851. The registration in this parish in 1872 was, white, 1,004; colored, 1,403. The Forman returns give Sheridan 1,441 votes, Pinchback 445. The Lynch board returns give Sheridan 798, Pinchback 992. In 1870 the Republican vote for auditor was 1,032, the Democratic ..... 713

These figures seem to demand that the vote of this parish should be investigated, or the difference between the returns of the two boards should be deducted from Mr. Sheridan's vote ..... 1,190

Outside of the parish of Orleans there are fifty-five parishes in the State. The Forman board omitted six and canvassed returns from forty-nine; three of these are mentioned above. Accepting the figures of the Forman board in thirty-seven of the remaining forty-six, without question, and looking at the nine remaining p r-ishes of Caddo, Rapides, Natchitoches, East Baton Rouge, Bossier, Grant, Saint Landry, Webster, and Saint Helena, it will be seen that these nine parishes in 1870 gave an aggregate Republican majority of 2,134. By the returns of the Forman board they gave in 1872 a Democratic or Fusion majority of 4,912. See the documents mentioned below as to these parishes respectively:

| Parishes. | Senate report. | Supervisors' exhibits. |
|---|---|---|
| | *Page.* | |
| Caddo | 306 | C and G. |
| Rapides | 306 | G and F. |
| Natchitoches | 307 | C and G. |
| East Baton Rouge | 308 | C and G. |
| Bossier | 309, 314 | C and G. |
| Grant | 311 | C and G. |
| Saint Landry | 312 | C and G. |
| Webster | 312 | C and G. |
| Saint Helena | 313 | |

| | |
|---|---|
| The returns from these nine parishes demand investigation, or Mr. Sheridan's majority should be deducted, at the least, if nothing be allowed Mr. Pinchback. | 4,912 |
| The aggregate of deduction which should be made, therefore, if no further evidence be taken, is, at the least | 12,355 |
| Sheridan's majority, by return of the Forman board, is | 10,614 |
| Leaving, in the only parishes which can be counted without further proof, a majority for Pinchback of | 1,741 |

Your committee are now assuming that the Forman board was the legal returning-board; that McEnery, so far as the legal returns show, is the *de-jure* governor of Louisiana, and the McEnery legislature the lawful legislature of that State. They give to the documents and proof, challenging the returns from these parishes, the same consideration, and no other, which they would be compelled to give them if the McEnery government were in office and the legality of the Forman board unquestioned. They consider the partisan source from which this proof comes, and withhold from it their implicit credence. They do not say that the crimes charged by it against the McEnery party are graver or better proven than the crimes charged against the Kellogg party. They perform, in their judgment, a duty imposed upon them by the order referring this case, in reporting that these papers give ample warning to the House that the seating of Mr. Sheridan, without further evidence, may possibly cover, and in part consummate, a conspiracy against the liberties of the people of Louisiana, which was a most stupendous crime. They do not feel at liberty to report, upon the evidence before them, that this seat is vacant. The registration, election, and returns were fair and honest, as they believe, in some, if not in a majority, of the parishes of the State. That the political friends of Mr. Pinchback have not before this, availed themselves of the opportunity which this contest between candidates on the respective State tickets offered, with process for witnesses and papers, to prove to the country that they carried this election, most seriously challenges the confidence and patience of the public. It is but just to say, however, that the expectation that Mr. Pinchback would be seated in the Senate, is, perhaps, the reason that such an effort had not been made.

If this case be remanded for further proof and be fully developed, the result, there is reason to believe, will either demonstrate that the Kellogg government is rightfully in power or will furnish the proof that it is a usurpation.

Your committee recommend the adoption of the accompanying resolutions:

*Resolved*, That the evidence in this case is not sufficient to establish the right of either P. B. S. Pinchback or George A. Sheridan to a seat in this House as a Representative at large from the State of Louisiana.

*Resolved*, That Mr. Sheridan have leave to amend his notice of contest, if he shall so elect, serving upon Mr. Pinchback his amended notice within twenty days hereafter; that Mr. Pinchback have liberty to answer such amended notice within forty days hereafter, and that, upon the service of such answer, the evidence of the respective parties be taken, under the existing laws of Congress in such case made and provided; and that in case of default of an answer to such amended notice, Mr. Sheridan be at liberty to take testimony *ex parte;* and in case of default to serve an amended notice of contest, Mr. Pinchback may serve a notice of contest, as provided by law, within forty days hereafter, and take testimony in ike manner.

These resolutions were adopted by the House.

Some testimony has been taken under the authority of the resolutions and referred to the committee.

Mr. Pinchback, however, is prosecuting his claim to a seat in the Senate, and has not appeared, either in person or by counsel, before the committee.

Can Mr. Sheridan be seated upon the case as it now stands?

I.

He cannot be seated upon the returns of the Lynch board, held by the State courts to be the legal board, as this board has never returned him elected.

II.

Nor should he be seated on the returns of the Forman board, for the reasons stated in the former report of the committee.

III.

Should he be seated on the parish returns?

A.

These parish returns have not been produced before the committee; they were, however, before the Senate committee, and Mr. Sheridan seems to have made reasonable effort to procure them. It is proved that they are correctly tabulated in the Forman returns.

It is not probable that the returns themselves would aid the committee or the House in the decision of this case more than the tabulation thereof in the certificate of the Forman board. This tabulation is found in the Senate report at page 82.

B.

This tabulation gives Mr. Sheridan 65,016 and Mr. Pinchback 54,402 votes, making Mr. Sheridan's majority 10,614.

C.

But in this tabulation six parishes are omitted Iberia, Iberville, Saint James, Saint Martin, Saint Tammany, Terre Bonne. There is no sufficient proof and certainly there is no presumption, until the Forman board is established as the legal returning-board, that these parishes were thrown out for lawful and adequate reasons. From some of them there were no returns; they were all Republican parishes. In any event, it is the prerogative of the House to revise the action of the returning-board.

When this case was under consideration before, Mr. Sheridan consented that the committee should count the vote of the six parishes, as returned by the Lynch board, which gives Mr. Pinchback an aggregate majority in the six parishes of 3,172. But Mr. Sheridan now modifies his proposition as to these parishes, and, on page 11 of his last brief, proposes to take the average of the votes in 1870 and 1874, giving himself in the omitted parishes 4,243 and Pinchback 6,903, which is 512 better for himself than his former offer.

D.

The committee in their report at the last session designated in particular twelve other parishes as demanding investigation, before Mr. Sheridan could be allowed the votes counted for him therefrom by the Forman board. (See point I, quoted above.) The House ratified the action of the committee, and gave due notice to Mr. Sheridan that the votes of these parishes would not be counted for him until he removed, by proof, the violent presumption of fraud therein. Mr. Sheridan, however, has done no such thing. He has not even attempted it; but, on the other hand, he comes back, demanding his seat again, with the offer to compromise with the House on these parishes; not on the Lynch returns, which would have been a more reasonable offer, after his default in taking further testimony; nor by taking the vote of 1870; nor by taking the average vote of 1870 and 1874, but by taking the vote of 1874 alone. (See Mr. Sheridan's last brief, page 15.)

E.

Take Mr. Sheridan's concession, page 12 of his brief. The Forman returns, found in the report of the Senate committee, at page 82, give to—

| | Sheridan. | Pinchback. |
|---|---|---|
| | 65,016 | 54,402 |
| 1. Complete the Forman returns by adding the average of the votes of 1870 and 1874 for the six omitted parishes, as proposed on page 15 on Sheridan's brief (see paragraph C, above) | 4,243 | 6,903 |
| | 69,259 | 61,305 |
| 2. Deduct the twelve disputed parishes (not including Orleans, table C, page 14, Sheridan's brief, and point D, *supra*,) | 14,208 | 8,421 |
| | 55,051 | 52,884 |
| 3. Substitute for the twelve parishes the returns of 1874 (Sheridan's brief, page 15) | 11,492 | 12,556 |
| | 66,543 | 65,440 |

This leaves Mr. Sheridan by the parish returns, as tabulated by the Forman board (so far as corrected), a majority of 1,103.

F.

As to Orleans Parish.

The committee, in the report made in the last session, deemed it their duty to communicate to the House the affidavits of Mr. Blanchard and others, which were received in evidence without objection from Mr. Sheridan, and which were annexed as an appendix to the committee's report.

Under the resolution adopted by the House, Mr. Pinchback examined Mr. Blanchard as a witness.

Mr. Blanchard testified, on page 25 of Mr. Pinchback's testimony: "A list of the dead men was furnished by the sextons of the cemeteries of New Orleans, and said lists were examined with the registration-books, and duplicate certificates of registration were made in the case of some of them."

He states the number of these, to the best of his recollection, as 500.

He also testified that fraudulent certificates of registration, which had been issued in 1870, were gotten by the witness from parties who had them, and were furnished to other parties, for fraudulent use in the election in 1872, to the number of about 800.

He also testified that a fraudulent erasure of colored voters was made, to his personal knowledge, in New Orleans (see page 33, Pinchback's testimony), to the number of 2,200.

But the affidavit of Mr. Blanchard was not the only evidence which was before the committee and communicated to the House in the appendix to the majority report. Mr. Blanchard was strongly corroborated by the affidavits of Walter S. Long, Henry L. Downs, W. L. Catlin, and Thomas J. N. Carey, which were also published with the former report of the committee.

But if there were no corroboration, and if the stupendous frauds in this election were not known to all the world, as they are, the testimony of Mr. Blanchard (which was not effectively shaken upon cross-examination) proves to our satisfaction that the registration in New Orleans was grossly fraudulent. If it was fraudulent only to the extent indicated by this witness, it was sufficiently so to more than balance the majority of 1,103 (see paragraph E, *supra*) outside of Orleans by the corrected Forman returns.

In the work upon elections by Mr. McCrary, late chairman of the Committee of Elections, just issued from the press, he says, at page 13:

> Where, however, a portion of the voters of a given precinct are thus unjustly denied the privilege of registration, and another portion are duly registered and permitted to vote, no doubt is entertained but that the entire poll should be rejected, if the votes of the former class cannot be counted, and if they are sufficiently numerous to affect the result.

Blanchard's testimony was corroborated by Mr. Packard, on pages 905 and 906 of the Senate report (which was resworn by Mr. Packard and formally put in evidence in this case), both as to the false certificates of registration and as to dead men being continued on the registration. He states, also, that to one house in the sixth ward in New Orleans 126 names were registered.

Mr. Blanchard was also corroborated as to the country parishes by the returns of the United States supervisors, on file with the clerk of this House. Indeed, though he implicates himself as an accomplice in the frauds which he discloses, and though he has doubtless been paid for his treachery to his confederates in crime, yet he is so far corroborated as to warrant a conviction of an accomplice in a criminal court upon his testimony.

It is insisted on the part of Sheridan that Blanchard, Long, Downs, Catlin, and Carey, whose affidavits are printed in the appendix to the former report of the committee in this case, are not credible witnesses.

Mr. Pinchback has only sworn Mr. Blanchard. He did not omit to swear the others because they were not accessible, nor because they had retracted, for they were all sworn in the case of Lawrence *vs.* Sypher. We would not consider their *ex-parte* affidavits for the benefit of Mr. Pinchback. He should have examined the witnesses upon the stand. The committee said of this evidence in their former report: "It is of such a character, in the judgment of your committee, as to demand a most thorough investigation of its truth or falsity before Mr. Sheridan is seated; and that "these papers give ample warning to the House that the seating of Mr. Sheridan, without further evidence, may possibly cover, and in part consummate, a conspiracy against the liberties of the people of Louisiana, which was a most stupendous crime."

While the committee would not consider *ex-parte* testimony for the purpose of seating Mr. Pinchback, they cannot shut their eyes to it, and to the 1,100 manuscript pages of official reports on file with the Clerk, the President's message, and the Senate testimony, for the purpose of seating Mr. Sheridan, especially after the action of the House in remanding this case, that this matter might be cleared up.

**This evidence charges that all these parties were in a conspiracy to carry this election by ballot-box stuffing and other frauds, and that they carried it in this way, if they carried it at all.**

**Mr. Sheridan insists that they lie about it; but he has sworn but one witness to prove it, whose testimony in full is as follows:**

EMILE HILBORN, being sworn, deposes and says:

Question. Will you state what position you held in the election of 1872?—Answer. I was supervisor of registration in the third (3d) ward—at least, assistant supervisor.

Q. Did any one approach you making propositions to stuff the ballot-boxes in your ward?—A. Yes, sir.

(Question objected to as being leading.)

Q. State fully as to any and all approaches, if any, that were made to you by any person with reference to stuffing the ballot-boxes in your (the 3d) ward in 1872.—A. The first party who approached me was Mr. Catlin.

Q. William?—A. Yes, sir. I told him I could carry the ward without using any such means; and about four o'clock on Sunday morning, before the day of election, Mr. Blanchard came with three parties in a cab, and told me he had three boxes outside already fixed, and that I should take them. I refused them.

Q. Was this Mr. Blanchard State registrar of voters?—A. Yes, sir.

Q. He approached you in company with Mr. Catlin?—A. Yes, sir.

Q. With three (3) boxes?—A. He said he had three (3) boxes out in the cab already fixed.

Q. And requested you to use them in the place of the boxes that were to be voted in during the day?

(Objected to on the ground of its being a leading question, and dictating the answer to witness.)

Q. What did he mean by saying those boxes were already fixed?

(Objected to as asking the opinion of the witness upon a fact not within his knowledge.)

A. From all I can learn, they were already fixed with tickets to carry the ward with a majority; but I don't know if he had them used by the Republicans or Democrats; I didn't ask him; I told him I hadn't any use for them.

Q. Were you a Fusionist or a Republican?—A. Fusionist.

Q. Were any of those boxes made use of in the ward?—A. No, sir.

Q. Could any stuffing of ballot-boxes have taken place in the ward without the cognizance of the United States supervisor and all the State supervisors?—A. It could not.

Q. Was the election quiet and peaceable?—A. It was.

Q. Were the boxes taken to the Mechanics' Institute in accordance with law?—A. They were.

(Objected to as leading.)

Q. Were they properly guarded on their way there?—A. About fifty (50) policemen guarded them.

(Same objection.)

Q. Did you accompany them?—A. I did, with both supervisors.

(Same objection.)

Q. Was there any attempt made to open any of the boxes on their way to the State-house?—A. There was not.

Q. Were they deposited in the State-house?—A. They were.

(Same objection.)

Q. Were you present during the counting of the various polls of the third (3d) ward?—A. I was, all the time.

(Same objection.)

Q. What was the general character of the election in the third (3d) ward as far as regards peace and order?—A. Very peaceable.

Q. What do you say in regard to the manner of counting the votes cast in the third ward as to fairness or unfairness?—A. Every box that was opened was opened in the presence of the United States supervisor, the Liberal supervisor, the Democratic supervisor, and the Reform supervisor, myself, and commissioners of election.

Q. Were there any parties in addition to the supervisors provided by the State and the United States law present upon the counting of the votes in the Mechanics' Institute?—A. There were.

Q. What party did they belong to; by whom were they sent?—A. By the Reform party.

Q. That was a distinct party from the Fusion party?—A. Yes, sir.

Q. Separate ticket in the State?—A. Yes, sir.

Q. As far as you know, was or was not the count of the votes of the third ward free and fair?—A. It was.

Q. Would it be within your knowledge if it had not been?—A. It would. Every box was counted, signed by all of the supervisors, United States supervisors, every one, as correct.

Mr. Blanchard, it will be remembered, was the State registrar, having complete control of the election machinery throughout the State. This is Mr. Sheridan's own witness, sworn for no other apparent reason than to disprove the evidence of Blanchard and Catlin; and he testifies that Blanchard and Catlin were in precisely the business they swear they were in themselves.

His further testimony, that the three stuffed ballot-boxes could not have been used, proved that the State registrar, Blanchard, who is generally supposed to be an expert in election villainies, didn't understand his business.

Despite the bad character of these witnesses, their testimony carries conviction to our minds of its substantial truth, with possible exaggeration. It is an appalling fact that such a state of things can exist, as even the partial truth of this testimony would show, outside of a penal colony. And it is surprising to us that a seat in Congress should be stoutly claimed without a more serious attempt to refute such damaging testimony.

Is it a fit thing that this House, by seating Mr. Sheridan, should wink at or cover the shameless iniquity of Louisiana politics?

IV.

The parishes to which especial attention has been called, to wit, the six parishes omitted from the Forman returns, the "twelve disputed parishes," and Orleans Parish, are not by any means the only parishes which might be seriously questioned, but they are, in our judgment, sufficient to dispose of this case.

We do not deem it necessary to discuss the claim of Mr. Pinchback to be seated upon the proofs in the case. We recommend the adoption of the following resolution as a substitute for the resolution of the majority, seating Mr. Sheridan:

*Resolved*, That George A. Sheridan is not shown to be entitled to a seat in this House as Representative at large from the State of Louisiana.

H. B. SMITH.
G. W. HAZELTON.
IRA B. HYDE.
LEMUEL TODD.
CHARLES R. THOMAS.

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## LAWRENCE vs. SYPHER.—FIRST CONGRESSIONAL DISTRICT OF LOUISIANA.

Certificates of election were held by both claimants, there being five returning-boards claiming an existence in the State.

Gross irregularities charged in the conduct of election and in the removal of voting-places to distant and inaccessible points.

Votes lost to contestee by reason of failure to establish proper voting-places cannot be counted or estimated unless the provisions of the enforcement act were strictly followed, which is not claimed in this case.

Majority report in favor of contestant.

Minority report declaring that neither Lawrence nor Sypher has shown himself entitled to a seat in the Forty-third Congress.

Majority report adopted March 3, 1875—Yeas, 135; nays, 86; not voting, 66.

Effingham Lawrence sworn in.

February 27, 1875.—Mr. James W. Robinson, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the contested-election case of Lawrence against Sypher, from the first Congressional district of Louisiana, submit the following report:*

Both claimants held certificates of election, on which they asked to be seated, but the House gave the *prima-facie* right to Mr. Sypher and seated him, and adopted resolutions for serving notice of contest, filing answer, and taking testimony by the parties, so that the case was not ready in hearing on its merits until the present session of Congress.

The committee find that of the five returning-boards that had an existence, claiming the right to canvass the returns of the election in Louisiana in 1872, only two ever pretended a promulgation of the result of any canvass made, viz, the Forman board and the Lynch board, so called. The committee have not found it necessary to decide which, if either, of these boards was the legally-constituted board to make such canvass.

We find the Forman board had actual possession of the parish returns, and so far as they were promulgated they were correctly tabulated, and, with the exceptions hereinafter mentioned, are substantially correct. They are as follows:

*Compiled returns of an election held in the State of Louisiana for Congressmen on the 4th day of November, A. D. 1872, pursuant to the provisions of an act entitled "An act to regulate the conduct and to maintain the purity and freedom of elections," &c., approved March 16, 1870.*

FIRST CONGRESSIONAL DISTRICT.

| Parishes. | J. B. Hickman. | J. H. Sypher. | Effingham Lawrence. |
|---|---|---|---|
| Livingston Parish | .... | 199 | 478 |
| Orleans, fourth ward | .... | 1,032 | 1,150 |
| fifth ward | .... | 1,425 | 1,770 |
| sixth ward | .... | 852 | 1,405 |
| seventh ward | .... | 1,758 | 1,464 |
| eighth ward | .... | 700 | 1,353 |
| ninth ward | .... | 734 | 1,860 |
| fifteenth ward | ... | 43 | 747 |
| Plaquemines Parish | 22 | 1,040 | 414 |
| Saint Helena Parish | .... | 411 | 563 |
| Saint Bernard Parish | .... | ..... | ..... |
| Saint Tammany Parish | .... | ..... | ..... |
| Tangipahoa Parish | .... | 658 | 723 |
| Washington Parish | .... | 201 | 426 |
| Total | 22 | 9,056 | 12,355 |

It will be observed that no returns are reported from Saint Bernard and Saint Tammany Parishes. The evidence shows that in Saint Bernard Parish Sypher received 410 votes and in Saint Tammany 629 votes, and that Lawrence received in Saint Bernard 270 votes and in Saint Tammany 460 votes, which should be counted for them respectively. That in the ninth ward of the parish of Orleans 943 votes were reported by the Forman board as cast for Sypher as candidate for Congress from the second district instead of the first. The evidence satisfies the committee that he should receive credit for these 943 votes.

Making these corrections, Mr. Sypher's total vote would be 11,088, and Mr. Lawrence's total vote would be 13,035.

To overcome this majority of 1,947 votes, as shown for Mr. Lawrence by the returns, the committee is asked to make deductions for frauds, &c. The principal ground on which the claim is based is the fact that in Plaquemines Parish the first, second, and third ward voting-places were abolished for that election, by means of which a large Republican voting population was left in the upper part of that parish from 25 to 35 miles from the nearest polls. The committee characterize the abolition of these voting-places as an outrage, for which there should be some relief. They, however, find that Mr. Lawrence was not a party to this wrong, and, so far as he was able, he caused restitution by tendering to all voters, irrespective of party, the free use of his stoamboat, which went down from Orleans and stopped at the several landings and took voters to the polls down the river.

The committee are unable to estimate the number who failed on that account to vote, but think, from the evidence, that it could not have exceeded about 350 votes altogether. The Republican vote in that parish was 1,040 in 1872. In 1874 it was 1,417, or 377 increase. As that parish was quiet, the probability is the vote of 1874 would be a fair test, but the vote for Lawrence was also increased several hundred over 1872.

The committee, however, are not able to find any principle of law on which votes could be added for that parish, even granting votes were lost to Mr. Sypher by reason of the failure to establish proper voting-places, unless the provisions of the enforcement act were strictly followed, which no one claims was done.

The other claim of contestee is that in the seven wards of Orleans Parish, in the first district, sufficient fraudulent votes were counted for Lawrence to make all of his majority counted as above.

The evidence on this point is very conflicting, and the witnesses subjected to the criticism of being parties to the crime. Their means of knowing how far they were successful in their effort to carry the election by fraud was not sufficiently accurate to satisfy the committee of the correctness of their estimates. In fact, with one or two exceptions, the witnesses did not pretend to estimate the extent of success of their efforts at fraud. That they were capable of perjury in office, and attempted fraud in violation of their official oaths, they swear to, and that at least the leaders in the conspiracy were venal, and were led to unblushingly expose their shame for gain, is clearly shown; and yet that such was the character of the officers chosen to conduct the election machinery in the interest of the fusion ticket in Louisiana has caused the committee to inquire with great care whether it was possible that in the seven wards in the first district sufficient fraudulent votes could have been counted to change the result. In that inquiry the committee cannot escape the belief that there could not have been one thousand fraudulent votes counted in these wards, for several reasons:

1st. The Lynch board, which made its canvass from *estimate*, and *outside* evidence, as well as the returns of the parishes, added only 108 votes to these seven wards besides the 943 before named as counted for the second district. The Lynch board was governed very largely by what is known as the political complexion of the several wards and parishes.

2d. There were United States supervisors of election at every polling-place, who were also present at the counting of the votes for members of Congress, and every fraud would be liable to be detected by them.

3d. The witnesses testify as to frauds *generally*, and not to specific acts of fraud, with but few exceptions, and their estimates are, in the opinion of the committee, entirely too problematical to overthrow positive returns.

Therefore, if the committee should allow Sypher 377 votes in Plaquemines Parish, and deduct 1,000 from Lawrence in the seven Orleans wards, the result would still leave Lawrence elected by 570 majority.

Again, examine the case in another way, viz: The Lynch board, from estimates and reports of the United States supervisors and from the returns as promulgated, made a proclamation of the result in the district, as follows:

*Extract from the compiled returns of an election held in the State of Louisiana for Representatives to the Forty-second and Forty-third Congresses, on the 4th day of November, A. D. 1872, pursuant to the provisions of an act entitled "An act to regulate the conduct and maintain the freedom and purity of elections," &c., approved March 16, 1870.*

FIRST DISTRICT.

| Parishes. | J. H. Sypher. | E. Lawrence |
|---|---|---|
| Livingston | 235 | 455 |
| Orleans | 7,516 | 9,643 |
| Plaquemines | 2,354 | 414 |
| Saint Tammany | 121 | 103 |
| Saint Bernard | 460 | 270 |
| Saint Helena | 687 | 289 |
| Tangipahoa | 769 | 618 |
| Washington | 157 | 433 |
| Total | 12,299 | 12,225 |

We, the undersigned, returning-officers, pursuant to the authority vested in us by the act No. 100, approved March 16, 1870, do hereby certify that the foregoing is a true and correct compilation of the statements of votes cast at an election for Representatives to the Congress of the United States held in the State of Louisiana on the 4th day of November, 1872; and we hereby declare the following-named persons were duly elected Representatives to Congress, to wit, J. Hale Syphers, first Congressional district, Forty-third Congress.

JOHN LYNCH,
*President of the Board.*
JAMES LONGSTREET,
GEO. E. BOVEE,
*Returning-Officers.*

It will be seen Saint Tammany Parish and Saint Bernard are counted; but in Saint Tammany Parish the committee are satisfied an error is made against Sypher, viz, 508 should be added to Sypher's vote, and 307 to Lawrence's.

The evidence of the members of the Lynch board and others shows beyond doubt that they at first decided in favor of Lawrence and made out and signed his certificate, and were about to deliver it when a large number of affidavits were brought in and were counted for Mr. Sypher, thereby changing the result and electing him by 74 majority. These affidavits were many of them simply "manufactured" for the occasion. The number of them is uncertain, but no witness makes the number less than 1,314, while the weight of evidence is that there were 1,700 of them.

As that board was strongly partisan and made its decision on esti-

mates and all the evidence before it, we cannot believe it would largely err in favor of Mr. Lawrence.

These affidavits must be deducted from Mr. Sypher's vote. If we call the number 1,314, the lowest named, and correct the parish of Saint Tammany as before mentioned, Lawrence will have a majority of 1,039. In the Lynch canvass, 1,037 votes were added to the Republican vote of the seventh ward in the first district of Orleans Parish, of which the 943 were a part.

If we should concede 1,000 fraudulent votes, however, in these parishes, Lawrence would still be elected. The relative strength of the colored and white population of these seven wards also makes the claim of so large a fraud improbable. By the census of 1870, in the ninth ward, for example, the white population was 10,442, while the colored was only 1,552. In that ward the Forman board gave Sypher 739 votes and Lawrence 1,860. While the population is one colored to six and seven-tenths white, the vote of Sypher is one to two and half for Lawrence. Now, Mr. Long swears that there were 244 fraudulent votes for Mr. Lawrence in that ward, which, if true, would reduce the proportion to about one Republican to two Democrats, which is so unreasonable that the committee cannot accept it as true upon the mere estimate of witnesses now strongly sympathizing with the other side. Therefore, whether we estimate from the promulgation of the Forman board or from the Lynch board, we reach the same conclusion, and recommend the adoption of the following resolutions:

*Resolved*, That J. Hale Sypher was not elected a member of the Forty-third Congress from the first district of Louisiana.

*Resolved*, That Effingham Lawrence was duly elected a member of the Forty-third Congress for the first district of Louisiana, and he is entitled to his seat.

J. W. ROBINSON,
*On behalf of the Majority of Committee.*

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VIEWS OF THE MINORITY.

Mr. Hazelton submitted the following as the views of the minority:

The undersigned minority of the committee decline to concur in affirming the right of the contestant to a seat in the Forty-third Congress, for reasons hereinafter stated.

We premise by saying that the contestee was seated upon a certificate which *prima facie* entitled him to the seat, and that his right thereto upon the merits was not submitted to the committee before taking the same.

The contestant takes the seat, if at all, upon proving affirmatively to the satisfaction of the House that he has a right thereto upon the merits. We submit that the evidence shows conclusively the utter absence of any such right.

The following parishes comprised the first district:

Orleans, fourth ward, fifth ward, sixth ward, seventh ward, eighth ward, ninth ward, fifteenth ward, Livingston, Saint Bernard, Saint Helena, Saint Tammany, Plaquemines, Tangipahoa, Washington.

The election was conducted under the auspices of the Democratic party, Governor Warmoth being conspicuously identified with the fortunes of that party for the time being, and employing all his power and enginery, in conjunction with the leaders of that organization, to accomplish a partisan success.

As an illustration in point, the parish of Plaquemines, in the south part of the district, is about 130 miles in length, and has always, since 1868, polled a large majority of Republican votes. The bulk of the colored population is in the north portion of the parish. In order to prevent the colored voters from participating in the election, the Democratic managers, immediately prior to the election, changed the polling-places of the parish, and took up or discontinued those in the portion of the parish where the colored voters resided, so that on the west side of the river no polling-place was established for 47 miles from the north boundary of the parish, and on the east side for 38 miles. A more high-handed and flagrant attempt to prevent the colored voters, who were known to be Republicans, from participating in the election, cannot be conceived. It was a wicked and shameless scheme on the part of the contestant's friends to defeat rather than to secure a fair election. It was a base prostitution of the powers emanating from the executive, wielded by or under the dictation of Democratic leaders, to consummate a dishonest and dishonorable purpose. Under the law of Louisiana the registrar, who is appointed and may be removed by the governor of the State, fixes the polling-places in his parish, and may determine their number and location according to his own wishes or interests, without consulting the convenience of the voters at all.

This power was exercised in the parish of Plaquemines in such manner as to require colored voters to go as far as from Alexandria and Washington to Baltimore to vote; and to emphasize the outrage the arrangements were consummated so clandestinely that the mass of colored voters knew nothing of the discontinuance of the polling-places theretofore established until the very day of the election.

The following admission appears in the printed evidence:

It is admitted that there were no polls on the left bank of the Mississippi River above the court-house, say thirty-five miles distance from the upper line of the parish; that on the right bank there was no poll above Ronquillo settlement, a distance of forty-seven miles; and it is further admitted that the largest part of the Republican or colored vote was in these parts of the parish.

It is further admitted that the bulk of the opposition vote was in the lower part of the parish, at the election held on the 4th day of November, 1872, in the parish of Plaquemines, for members of Congress.

EFFINGHAM LAWRENCE,
Per H. C. WARMOTH,
*Representing Mr. Lawrence.*

Mr. Challaire, a Democratic registrar, testifies as follows, in referring to this subject:

Q. Why didn't you establish polling-places in the upper part of the parish?—A. Well, I didn't want to say a word about that, but as my friend Mr. Lawrence went to my court-house the other day and said I was the only one at fault for this, that I had not put more polls in the parish, I will say that Mr. Lawrence advised to put only three, and I put five.

The result of this scheme was what might have been anticipated; less than half of the estimated Republican vote of the parish was polled.

Judge William M. Prescott states in his testimony that "according to the registration-books made by the Democratic registrar, Challaire, and after a most careful revision of the books of his predecessors and the erasure of all doubtful and suspicious names therefrom, the registered vote of this parish was 3,180."

Of this number it is claimed by the contestant that but 1,454 were polled—the deficiency being almost exclusively on the part of the Republicans. Mr. Prescott states the number of Republican votes not polled at 1,710.

The number of Republican votes cast at the seven wards or polling places in this parish, where the polling-places were taken up and discontinued, was in 1870, as stated by Judge Prescott, according to the official returns, 2,204.

Turning from this parish, let us look at the testimony touching other parts of the district.

In doing this it becomes necessary to refer to and quote from the testimony of Blanchard, Long, Carey, Downs, Cannon, McLaughlin, and others, all or nearly all of whom were in the contestant's party, and the most of whom held some official position under the election-laws.

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared before me Walter Sully Long, who, being duly sworn, upon his oath states as follows:

From March, 1872, to January, 1873, I was chief clerk to B. P. Blanchard, then holding the office of State registrar of voters for the State of Louisiana. In that capaciiy I was in the fullest confidence of my chief, and was aware of all and every transaction of a political nature in the office during the campaign of 1872.

The necessity of carrying the election for the Fusion party was frequently a matter of discussion between Blanchard, myself, and others, and a plan of operations was finally adopted at my suggestion, and carried out, as follows:

I. The sexton's monthly returns of burials of persons over the age of twenty-one years were carefully compiled by wards, the registration-number ascertained and noted, and a list made of them.

II. A thorough examination was made of the registry-book of 1870, in order to ascertain the number of names of fictitious persons registered in that year. In every ward where the persons having control of these false registry-papers were acting with the Fusion party these names were used, but in wards where the supervisors of 1870 were not acting in harmony with the Fusion party, particular care was taken to prevent their using the fraudulent papers, and to detect any attempt at so doing.

III. A system was established requiring all persons who had been registered as voters in 1870, and who had subsequently removed, to deliver up their papers of that year before receiving certificates of registration in 1872. These were sent to the office of the State registrar of voters every week, and were carefully sorted out by myself and others, and all that showed no evidence of having been examined by the United States supervisors of election were set aside, to be used by repeaters on election day.

IV. During the ten days preceding the election a list was made out by me of the registry numbers and names of the dead, removed, and fictitious persons before described, and given to each assistant supervisor of registration for the city wards. Two or more persons in each ward, who were to serve as commissioners of election, were set to work making lists of those names upon sheets of paper similar to that designed to be used on the day of election in keeping the written lists of voters required by law at each polling-place.

V. The poll-lists were printed, containing the entire registration of both 1870 and 1872. No erasures were made until the Saturday and Sunday preceding the election, when the names that could not be made available for the Fusion cause were crossed off in black pencil on the list for certain polls in each ward, and in number to correspond with the written lists of names before alluded to.

These preliminaries having been completed, it was a mere question of manual dexterity on the part of the commissioners of election to get within the box a number of ballots to correspond with the names crossed off in black from the printed lists, and written in advance upon the tally-lists.

The estimate of the number of votes required to carry the election was as follows:

For the First ward, 500; Second ward, 500; Third ward, 1,000; Tenth ward, 500; Eleventh ward, 500; Twelfth ward, 250; Thirteenth ward, 100; Fourteenth ward, 50—making a total of 3,400 for the up-town wards; and for the Fourth ward, 300; Fifth ward, 500; Sixth ward, 500; Seventh ward, 500; Eighth ward, 600; Ninth ward, 600; Fifteenth ward, none—a total of 3,000, and an aggregate of 6,400. To this must be added the number of papers to be voted on by "repeaters," which was estimated at 2,000.

VI. The number of fraudulent votes actually counted, and which can be proved by my own testimony and that of other persons concerned, is—

| | |
|---|---|
| In the First ward | 281 |
| In the Second ward | 243 |
| In the Third ward | 803 |
| In the Tenth ward | 306 |
| In the Eleventh ward | 330 |
| In the Twelfth ward | 101 |
| In the Thirteenth ward | 98 |
| In the Fourteenth ward | 26 |
| Total up-town | 2,188 |
| In the Fourth ward | 186 |
| In the Fifth ward | 155 |
| In the Sixth ward | 336 |
| In the Seventh ward | |
| In the Eighth ward | 393 |
| In the Ninth ward | 244 |
| In the Fifteenth ward | |
| | 1,314 |
| Grand total | 3,502 |

Beyond this, the papers given to repeaters were about 2,000. I cannot at present remember the exact number, but I think that 1,400 were given out to be used in the first, fourth, and sixth municipal districts, and 600 to be used in the second and third districts.

I further know, and can produce, I believe, the men who acted as commissioners of election at the polls in each ward where fraudulent votes were cast or counted at the general election of November 4, 1872.

WALTER S. LONG.

Sworn to and subscribed before me this 4th day of September, 1873, at New Orleans, La.

F. A. WOOLFLEY,
*U. S. Commissioner.*

## Brainard P. Blanchard, another witness, whose capacity for the sort of work required of him will hardly be questioned, swears:

That he was appointed by Henry C. Warmoth, governor of the State of Louisiana, to the office of State registrar of voters, being also ex-officio supervisor of registration in and for the parish of Orleans; that he filled the said office during the years 1870, 1871, and 1872; that in the last-named year he was in full political sympathy with the liberal movement, and, subsequently, upon the Fusion of the liberal and Democratic parties, with what was known and styled the Fusion party, and, in conjunction with others of the same political party, devised plans for carrying the general election of November 4, 1872, in favor of said Fusion party and their candidates, by taking advantage of all the powers with which he was invested by the acts of the general assembly, numbered, respectively, acts No. 99 and 100, approved March 16, 1870, and known as the registration and election laws of 1870.

That, in furtherance of this scheme, he caused a careful compilation of the list of deceased males over twenty-one years of age who had died since the close of registration in 1870, which lists were required by law to be furnished to him by the sextons of the various cemeteries in the parish of Orleans; and that said lists so compiled were carefully collated with the registration books, and the registry-number and the election-precinct in which the deceased was registered noted.

That instead of carrying out to the full letter the provisions of section 7 of the registration-law, he caused to be erased from the lists of registered voters only the names of such deceased electors as were well known in the community, but in cases where the deceased was an obscure personage (a large majority of the whole number), he caused to be made out a duplicate registration-certificate in his name; the same to be retained and used at the general election, as is hereinafter set forth.

## Further on deponent says:

Deponent further says that to his knowledge a large number of certificates of registration had been issued in 1870 in the names of fictitious persons; that he caused a careful examination of the books of registration to be made, and of other records and memoranda in his possession, to ascertain the quantity of such fraudulent registries, and also made efforts to ascertain in whose possession such papers in the names of fictitious persons were,

and did obtain possession of some two thousand such papers; and in relation to such of said papers which he could not obtain possession of, the following course was pursued, to wit, whenever he ascertained that they were in the hands of persons belonging to the Republican party, he then and during registration caused the said fictitious names to be erased from the registry lists as fraudulent; but in all cases when he ascertained that such papers were in the possession of persons in the interest of the Fusion party, he instructed the assistant supervisors of registration not to erase such fictitious names from the books, in cases where he had confidence in those officers; but in cases where he had reason to suspect the fidelity of any assistant supervisor, or to believe any of them would not assist in or abet such work, he prohibited them from making any erasures whatever, reserving that work for himself, or assigning it to some confidential clerk or confidential agent whom he could implicitly trust, as will more fully appear by the documents hereto annexed and marked A and B.

The witness then goes into a lengthy detailed statement of the frauds actually perpetrated by the political managers of the Democratic or Fusion party in the election of 1872, and closes with the following statement:

Deponent further says that he believes, and has reason to believe, and knows, that, had not the fraudulent practices as above recited been resorted to and made use of by persons in the interest of the Fusion party and for the benefit and advantage of said Fusion party as hereinbefore set forth, and had the election returns been properly and fairly made by the supervisors throughout the State, and had the large Republican parishes which were thrown out unjustly, unfairly, and for the purpose of reducing the Republican vote, been counted as they should have been, the candidates for Presidential electors, members of Congress, and State officers upon the Republican national and State ticket would have been shown to have been elected by a large majority of the votes cast in the State at the election held on the 4th of November, 1872.

And deponent further says that he believes, has reason to believe, and knows, that the Republican national and State tickets received a considerable majority of the votes actually cast at the election held on the 4th day of November, A. D. 1872, in the State of Louisiana.

B. P. BLANCHARD.

Sworn to and subscribed before me on this 2d September, 1873; and I hereby certify that the affiant, B. P. Blanchard, was State registrar of voters, &c., during the years 1870, 1871, and 1872.

Witness my hand and seal at the city of New Orleans, on the day first above named.

[SEAL.] F. A. WOOLFLEY,
*United States Commissioner, Chief Supervisor of Elections, District of Louisiana.*

William L. Catlin, another witness, testifies as follows:

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared before me, the undersiged authority, W. L. Catlin, a resident of the city of New Orleans, who being duly sworn deposes and says: That he was in full sympathy with the so-called Fusion party at the last general election of November 4, 1872, in the State of Louisiana; that he was, during the same year, an intimate, personal, and business friend of B. P. Blanchard, then State resistrar of voters, and as such aided him in many ways in carrying out his plans for securing the success of the Fusion party at the said election; and that, among other things, he aided in the preparation, labeling, and supplying with stationery, &c., the regular ballot-boxes for said election, and attended to their distribution to the various wards. There were in all one hundred and seventeen ballot-boxes used in the city of New Orleans; and that, in addition thereto, he attended to the distribution of sundry additional or duplicate boxes on Sunday night, November 3, for use at the said election, as he understood, to further promote the success of said party, by substituting or otherwise, and delivered some of them personally to the parties whom it was intended should use them.

W. L. CATLIN.

Sworn to and subscribed before me this 3d day of September, 1873.

F. A. WOOLFLEY,
*United States Commissioner.*

Henry L. Down, another witness, in the employ of Blanchard, engaged in the business of aiding the Fusionists or Democrats, says:

Q. How many names of colored registered voters were improperly stricken from the rolls in the Fourth ward?—A. I have the figures here that I made out myself some time ago.

Q. You can use them in refreshing your memory now in answering my question.—A. Three hundred and nine in the Fourth ward were stricken from the rolls in that manner.

Q. And in the Fifth ward how many?—A. Two hundred and twenty-three.

Q. And in the Sixth ward?—A. Three hundred and fifty-three.

Q. And in the Seventh ward?—A. Three hundred and eighty-six.

Q. And in the Eighth ward?—A. One hundred sixty-four.

Q. And in the Ninth ward?—A. One hundred and twenty-two.

Q. In all, how many?—A. One thousand five hundred and fifty-seven.

Q. Were those names stricken off arbitrarily?—A. They were ordered to be stricken off.

Q. Was any evidence taken to ascertain whether they were entitled to vote before this action was had?—A. I don't know.

Q. By whose order were those names stricken off?—A. It was after a consultation with the Fusion committee, Dr. Walker and others.

Q. Do you know whether any fraudulent duplicate certificates were isssued?

(Mr. Rice objected to the question as leading.)

Q. Do you know whether any such thing was ever done or not for the first Congressional district?—A. I do.

Q. Do you know whether any were issued in the wards within the first Congressional district of this city?

(Objected to as leading.)

A. I do.

Q. State succinctly the manner in which such fraudulent or duplicate certificates were issued.—A. I can state how they were obtained. I decline to state how they were issued.

Q. State how they were obtained.—A. They were obtained by persons moving from one ward to another. According to the requirements of the registrars, each of these persons moving from one ward to another were to give up their original certificate and get a new one. These original certificates were sent to the central office of the State registrar of voters. Some of them were cancelled, but many of them were reissued in this manner to be voted upon again.

Q. How many of such certificates were issued?—A. I should judge about three thousand of them.

Q. Can you approximate the number that was issued for the Fourth, Fifth, Sixth, Seventh. Eighth, and Ninth wards?—A. I should think there was about one thousand or twelve hundred used in those wards.

Q. To whom were those certificates given?—A. I decline to answer that question.

Q. Were they issued to Republicans, or Democrats, or Fusionists?—A. They were issued to parties that I presume were in the Fusion interest. I had no reason to doubt that they were.

Q. Were any issued to candidates on the Fusion ticket, as far as you know?—A. Yes, sir.

* * * * * * *

Q. Did you ever make an affidavit in regard to the conduct of the election on that day?—A. I did.

Q. Where did you make such an affidavit?—A. I made it before Commissioner Woolfley.

Q. Is this printed copy now shown you a copy of the affidavit that you made?—(Shown affidavit of Henry L. Downs, contained in printed pamphlet marked X, Y, Z, annexed to the testimony taken March 30, 1874.)—A. I see no mistake in it; it seems to be correct, according to my affidavit.

Q. Are you willing to reiterate the statements made in that affidavit?—A. I am, and I will.

Judge Dibble offered the affidavit referred to, and the following is a copy Mr Rice making the same objections that he had made to the introduction o the affidavit of B. P. Blanchard:

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared, this the 21st day of June, 1873, before me, the undersigned authority Henry L. Downs, who, being duly sworn, deposes and says: That, during the registration preceding the election of November 4, 1872, he was a clerk in the office of State registrar of voters for the State of Louisiana; that during the two months of registration certificates and duplicates of registration accumulated in said office. They were collected by the assistant supervisors of registration of the different wards of the city of New Orleans, from voters changing their residence from one ward to another, to whom a new certificate would be furnished and the old one forwarded to the office of State registrar of voters, who was *ex officio* supervisor of registration for the parish of Orleans, or city of New Orleans. These certificates and duplicates accumulated to the number of several thousand, and completely filled a large-sized ballot-box.

Deponent further states that he assisted in assorting them, according to wards and availability for use by repeating voters. Some were cancelled, as being considered unsafe to use, or as having been marked in some manner by the United States supervisors; others (and

the larger portion), upwards of two thousand, were retained intact, to be used on the 4th of November, 1872; and deponent further states that it is his belief that they were so used.

HENRY L. DOWNS.

Sworn to and subscribed before me on this 4th day of September, 1873, at New Orleans, La.

F. A. WOOLFLEY,
*United States Commissioner.*

J. E. CANNON sworn and examined on behalf of J. Hale Sypher.

By Judge DIBBLE:

Question. Where do you live?—Answer. Corner Locust and Lafayette streets.

Q. What ward is that in?—A. Third ward.

Q. Where were you on the last election day?—A. Living in the Ninth ward, sir.

Q. What position did you hold, if any?—A. First clerk, and then registrar.

Q. Of the Ninth ward?—A. Yes, sir.

Q. By whom were you appointed?—A. I presume it was by Governor Warmoth. I was appointed by Mr. Blanchard. I presume it was by order of Governor Warmoth.

Q. Were you there during the whole registration?—A. I came there a few days after the registration had been opened.

Q. Do you know whether any frauds were committed in connection with the registration in the Ninth ward?—A. There were.

Q. Of what nature?—A. Fraudulent papers, fraudulent voting—fraudulent papers that I know of.

Q. State the circumstances.—A. Well, I know of about eleven hundred fraudulent papers. There were about between three and four hundred fraudulent papers on the old books that I had possession of, and I had possession of about one hundred on the new books, and I duplicated them, eight for each vote; for each vote I made eight certificates out.

Q. From the old registration?—A. No, sir; from the new registration.

Q. You say there were a hundred names?—A. Yes, sir.

Q. And eight certificates for each, which made eight hundred?—A. Yes, sir.

Q. To whom were they given?—A. I decline to answer who they were given to.

Q. Do you know whether they were voted on election-day?—A. I have reason to believe that they were.

Q. In the interest of what political party?—A. The Fusion party; they were, most undoubtedly, not given to the Republican party.

Q. Do you know whether they were voted for or against Mr. Sypher?—A. They were put there to vote against him; they were instructed to vote against the State Republican ticket.

Q. Do you know whether there were any erasures improperly made?—A. I made the erasures myself.

(Mr. Rice objected, on the ground that the question was leading.)

Q. Do you know whether there were any names erased from the registration-lists?

(Mr. Rice objected on the same ground.)

A. Yes, sir; I made the erasures myself.

Q. Were they properly or improperly made?—A. Well, I just scratched only the colored people and those that I knew to be republicans.

Q. Were you instructed to do so?—A. I had my instructions from Mr. Blanchard to scratch none but colored people, or if I knew any of the names in the interest of the republican ticket to scratch them off.

Q. How many did you scratch off?—A. Between a hundred and eighty-five and two hundred. I disremember the exact amount or number now.

Q. Were you present in the Mechanics' Institute during the counting of the votes of the ninth ward?—A. Yes, sir; from the beginning to the end of it.

Q. Do you know whether the count was fair or unfair?—A. There were some parties got a square count and others did not.

Q. Do you know whether Mr. Sypher got a square count or not?—A. No, sir; he did not.

Q. What do you know about the count for Congressmen?—A. Well, I know that I beat Mr. Sypher in the ward. I know that he got beat in the ward, and I helped to do it.

Q. Did you do that under instructions?—A. My instructions from Mr. Blanchard, in the institute, were to hold the State ticket up.

(Mr. Rice objected, on the ground that the witness had already voluntarily and explicitly declared himself guilty of the enormities concerning which he had testified, and the question as to whether he had had any instructions or not could have no effect upon the decision of the case.

Judge Dibble stated that he proposed to examine this witness as to the instructions issued by Mr. Blanchard, for the purpose of showing that there was a concerted scheme to defraud Mr. Sypher of his election in the ninth ward of the city of New Orleans and in other precincts

of the first Congressional district, and that that scheme of fraud was agreed to by the leaders of the political party whose candidate Mr. Lawrence was.

Judge Lynch said he saw no reason why the witness should not detail under what instructions he had acted.

WITNESS. My instructions were to hold the State ticket up at all hazards, let the circumstances be what they would.)

Q. What State ticket do you refer to?—A. The whole State fusion ticket; and if I was arrested, I would be released on bond and taken out.

Q. Can you approximate the number of votes which Mr. Sypher was cheated out of in that count?

(Mr. Rice objected, on the ground that the question did not admit of a definite answer.)

Q. State in detail what was done in the Mechanics' Institute under those instructions?—A. Well, whenever I had opportunity to miscall his name and call Lawrence's, I did it; and if I didn't have a chance to miscall his name I wouldn't do it, but I run a pencil across his name and called it a scratch.

Q. Do you know how many votes Mr. Sypher was deprived of in that way?—A. Well, I didn't take any account of that. There were, I think, a good many votes.

Cross-examined by Mr. RICE:

Q. What is your present business?—A. Pound-keeper of the first district.

Q. From whom is that appointment?—A. Mr. Brewster, administrator of police.

Q. Are you taking any part in politics?—A. At present I am not taking any part in politics at all; I am waiting for another election to come around again.

Q. Have you taken any part in politics since the election of November, 1872?—A. Well, I have voted at one meeting at the mother club for president.

Q. What mother club?—A. Third ward.

Q. Republican?—A. It is a republican club.

Q. You are acting, then, with the Republicans now?—A. I shall in the future.

Q. You are now doing so, as far as you have acted since that time you have been speaking of?—A. In the last few months I have.

Q. Have you held any position in the Republican party—any official position?—A. None at all.

Q. What were you at the time of the election; were you registrar?—A. I was first appointed clerk, and for a great part of the time I acted as registrar—both clerk and registrar.

Q. These acts that you have spoken of you did as what?—A. In issuing papers, I did it when I was acting as registrar.

Q. Were you a sworn officer as registrar?—A. Not as registrar when these papers were issued; I was acting as registrar.

Q. Were you ever registrar at all?—A. I was registrar at the counting.

Q. Were you not sworn at all to the performance of your duties?—A. I was not sworn at all.

Q. You were not sworn as clerk, either?—A. Not as clerk, either.

Q. Were you cognizant of the fact that these acts were fraudulent at the time you did them?—A. Of course I knew they were fraudulent.

Q. What you did, you did in full knowledge that you were doing fraudulent and illegal acts?—A. Certainly.

Q. You were as well aware of that then as you are now?—A. Of course I knew I was doing fraudulent business—of course.

Q. You state that you prepared, I believe, eight hundred fraudulent election-papers or registration-papers.—A. Yes, sir; I did.

Q. You declined to state to whom you gave them. I put the question now: To whom did you give them?—A. I decline to answer.

Mr. RICE. I insist upon an answer.

By Judge LYNCH:

Q. On what grounds do you decline to answer?—A. Because I do not wish to implicate myself with those parties that I gave the papers to.

Q. Are you afraid of a criminal prosecution or are you afraid of bodily violence?—A. If it does not do it directly, it might do it indirectly; if you will produce the books of the registration here, I could put my finger on every fraudulent vote that was counted.

(The witness declining to answer the question of Mr. Rice and Judge Lynch stating that he had not the power to coerce him to do so, Mr. Rice declined any further cross-examination.)

THOMAS J. M. CAREY sworn and examined on behalf of J. Hale Sypher.

By Judge DIBBLE:

Question. Where do you live?—Answer. In the ninth ward, corner Moreau and Louisa streets.

Q. Where did you live on the day of the election in 1872?—A. At the same place.

Q. Did you make an affidavit in regard to the conduct of the election in the ninth ward?—A. It was after that, sir.

Q. You made an affidavit in regard to it?—A. Yes, sir.

Q. Examine this document, and state whether that is the affidavit you made and before whom it was made. (Shown paper.)—A. Yes, sir; that is my affidavit, made before Commissioner Grant, and written by myself.

Judge Dibble filed the document referred to, and it is hereto annexed, and marked "105," and the following is a copy:

(Mr. Rice objected on the same grounds that he had made to the introduction of similar documents in connection with the testimony of previous witnesses.)

NEW ORLEANS, *September* 6, 1873.

Personally appeared before me, William Grant, United States commissioner, and for the district of Louisiana, duly commissioned and qualified, Thomas J. M. Carey, esq., who, after being duly sworn according to law, deposes and says as follows:

I was appointed chairman of the committee of naturalization in the ninth ward of the city of New Orleans by the Democratic and fusion parties, and performed the duties assigned me during the last registration and election.

Our instructions were to naturalize all applicants, whether entitled to naturalization by law or not; the fourth and eighth district courts were reported as being favorable to issuing certificates to Republicans; the first, second, and sixth district courts were favorable to Democrats and fusionists. When we would find applicants to occupy the first, second, and sixth district courts, we would then go to the eighth district and represent ourselves as Republicans; not an applicant was refused in the first, second, or sixth district courts. The Democratic or fusion party furnished the blanks for the first, second, and sixth district courts, and the Republicans were reported as having furnished the blanks for the eighth district court. In the first, second, and sixth district courts, if a party was not vouched for by the naturalization committee, the judge would subject them to a rigid examination, and if they succeeded in getting the order of court, the clerk would not issue the certificates of naturalization without being paid for it. When parties were vouched for by the committee of which I was chairman, few questions were asked by the judges and no charge was made by the clerk. When we had few applicants, we would take the same parties under different assumed names and get certificates of naturalization for them. When we had doubls of the parties, we would retain the certificates and have them registered. In other cases the parties would ba allowed to retain them. Our committee aided all applicants who were favorable to the Democratic or fusion ticket, whether they resided in the ninth ward or not. Our instructions also required us to explain to all applicants what questions would be asked them by the judges. Our committee were employed in this service about one month and a half previous to the closing of registration, and, to the best of my knowledge and belief, caused at least two thousand fraudulent naturalization-certificates to be issued to be voted on the day of election for the Democratic or fusion ticket.

I was appointed commissioner of election for the poll corner of Morales and Louisa streets by B. P. Blanchard, esq., registrar of voters, on the recommendation of the democratic parish committee and the Ninth ward auxiliary club. On the day previous to last election the commissioners of election were ordered to assemble at the Mechanics' Institute, to receive instructions for the day of election. We were instructed to place every impediment in the way of voters who were not Fusionists, by making them sign their names, demanding the number of their residences, and other questions to annoy them; and, lastly, refer them to the office of the ward supervisor before receiving their ballots, so as to harass and annoy them into abandoning the attempt to vote.

On the day of election the orders of the registrar of voters were faithfully carried out; in fact, the commissioners went further. When parties held the Fusion tickets in their hands they were taken without question. When tickets were folded, and the applicant not known to be favorable, they would be subjected to an inspection under the plea that the commissioners must be certain that the voter is aware what ticket he is voting. If the folded ticket proved to be Republican, we would act as indicated by instructions. If Democratic, it would be deposited in the ballot-box. We kept a correct account of every ballot deposited in the box. In cases where we were compelled to receive the vote of a Republican, whether white or colored, we would write in large characters on his certificate, so as to attract attention if attempt was made to vote a second time; but when a Fusionist presented his certificate, the indorsement required by law to be made on certificates would be written in small characters on the corner, so as to facilitate him in repeating. When a Fusionist presented himself a second time on a certificate that had already been voted on, one of the three Fusion commissioners who were placed at each poll would hold the certificate in his hand so as to conceal the former indorsement, and call out to the United States inspectors, two of whom were placed at each polling-place, saying, "This is all right." If, as in some cases, they would take the certificate in hand and discover the former indorsement, the ballot would be refused. This, however, was rarely the case. There were about 600 fraudulent votes polled

in the Seventh ward, about 600 in the Eighth ward, and about 1,200 in the Ninth ward, making in all about 2,400 fraudulent votes illegally polled on the day of election for the Democratic Fusion ticket.

THOMAS J. M. CAREY,
*Corner Moreau and Louisa.*

Sworn and subscribed to before me September 6, 1873.
[SEAL.]

WM. GRANT,
*United States Commissioner, District of Louisiana.*

Cross-examined by Mr. RICE:

Q. Are you in any official position now?—A. No.

The operations of some of these witnesses embraced the whole State; others, only the city of New Orleans and the first district. We might quote more extensively, but we forbear. If any further testimony is wanted of the utter and disgusting rottenness which pervaded the management of this so-called election, it may be found in the volume of printed evidence submitted to your committee. Language fails us to characterize this management as it deserves, if only a tithe of what is averred by the witnesses be true. It discloses the most wanton and shameless disregard of the sanctities of the ballot-box, and of the vital principles of republican institutions which rest upon such sanctities, to which our attention has ever been called. No man who respects his government can read this testimony with indifference. It touches the essential foundations on which republican government rests, and to suppose the same practices here detailed spread throughout the other Congressional districts of the Union is to suppose the absolute doom of our institutions.

Of course it is claimed that these witnesses have testified falsely. This was roundly asserted on the argument. It may be so. But if these witnesses were fit to intrust with the responsibile duties assigned them by the Fusion or Democratic party, they ought to be fit to testify as to the manner in which they executed their trusts. It does not lie in the mouths of those who employed such agents, and who seek the advantage of their acts, to discredit their evidence.

But in the absence of any positive knowledge on the subject, the committee cannot disregard the testimony of witnesses whose statements are not on their face untrue, and who stand unimpeached. If these witnesses have such reputations for truth and veracity where they reside, why have they not been impeached? Why leave the duty of impeaching them to the attorney who argued the case? It was due the committee, as it was due the House, that these witnesses should have been duly impeached if they could be.

Taking this evidence to be substantially true, we submit that it shows this so-called election to have been merely a wicked conspiracy to prevent an election; for there is no just sense in which that which is alleged to have transpired in this district in 1872 can be called an election.

The undersigned cannot consent to enter upon the task of framing devices and spelling out methods for affirming the right of a party to a seat in the House of Rrepresentatives from the materials here supplied. We cannot do it without making ourselves parties to these frauds, and encouraging their repetition.

Nor must it be inferred that we are prepared to affirm the right of the contestee, upon the merits, to the seat he occupies. We append the following table of figures to show what he claims to have been the result of this so-called election:

*Returns of Lynch board (page 146 of the testimony).*

FIRST DISTRICT.

| Parishes. | J. H. Sypher. | E. Lawrence. |
|---|---|---|
| Livingston | 235 | 455 |
| Orleans | 7,516 | 9,643 |
| Plaquemines | 2,354 | 414 |
| Saint Tammany | 121 | 103 |
| Saint Bernard | 460 | 270 |
| Saint Helena | 687 | 289 |
| Tangipahoa | 769 | 618 |
| Washington | 157 | 433 |
| Total | 12,299 | 12,225 |
| | (629) | (410) |
| Complete returns from the parish of Saint Tammany (page 149 of testimony) | 508 | 307 |
| Total vote | 12,807 | 12,532 |
| Deduct 1,700 votes from Sypher; that number of affidavits, it is alleged, were counted for him (see page 14 oft he testimony) | 1,700 | |
| Total vote for Sypher | 11,107 | |
| Deduct 3,077 fraudulent votes counted for Lawrence, (see testimony, pages 192, 193, 194, 243, 244, 246, 247, 232, 233, 234, 235, 236, 237) | ..... | 3,077 |
| Total vote for Lawrence | ..... | 9,455 |
| Sypher's majority | 1,652 | |

*Returns of Forman board (page 48 of testimony).*

FIRST CONGRESSIONAL DISTRICT.

| Parishes. | J. B. Hickman. | J. H. Sypher. | Effingham Lawrence |
|---|---|---|---|
| Livingston Parish | ..... | 199 | 478 |
| Orleans, Fourth ward | ..... | 1,032 | 1,150 |
| Fifth ward | ..... | 1,425 | 1,770 |
| Sixth ward | ..... | 852 | 1,405 |
| Seventh ward | ..... | 1,758 | 1,464 |
| Eighth ward | ..... | 700 | 1,355 |
| Ninth ward | ..... | 734 | 1,860 |
| Fifteenth ward | ..... | 43 | 747 |
| Plaquemines Parish | 22 | 1,040 | 414 |
| Saint Helena Parish | ..... | 411 | 563 |
| Saint Bernard Parish | ..... | ..... | ..... |
| Saint Tammany Parish | ..... | ..... | ..... |
| Tangipahoa Parish | ..... | 658 | 723 |
| Washington Parish | ..... | 201 | 426 |
| | 22 | 9,056 | 12,355 |
| Complete vote of Fifteenth ward (testimony, page 62) | ..... | 943 | ..... |
| Complete vote of Saint Tammany Parish (testimony, page 149) | ..... | 629 | 410 |
| Complete vote of Saint Bernard Parish | ..... | 460 | 270 |
| Total vote | ..... | 11,088 | 13,035 |
| Deduct 3,077 fraudulent votes for Lawrence, (as shown by testimony, pages 192, 193, 194, 243, 244, 246, 247, 232, 233, 235, 236, 237) | ..... | ..... | 3,077 |
| Total vote corrected | ..... | 11,088 | 9,958 |
| Sypher's majority | ..... | 1,130 | ..... |

The testimony shows gross irregularities on the part of the partisans of the contestee, which we are as far from indorsing as those on the other side. They do not seem to have been so general and systematic, and it may be claimed for them, perhaps, that they were resorted to for the purpose of counteracting the schemes and machinations of the contestant's friends, in whose hands all the machinery of the election was placed.

We are not disposed, in the light of all the evidence, to weigh one claim against the other. We think both are so tainted, so mixed with fraud, and so involved in uncertainty, that it is safer and better to refuse to affirm either.

The precedents heretofore established authorize this decision, and we think the case amply justifies us in adopting it.

We therefore recommend the adoption of the following resolution:

*Resolved*, That neither Effingham Lawrence nor J. Hale Sypher has shown himself entitled to a seat in the Forty-third Congress.

G. W. HAZELTON.
H. BOARDMAN SMITH.
IRA B. HYDE.
LEMUEL TODD.
CHARLES R. THOMAS.

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**FORTY-FOURTH CONGRESS, FIRST SESSION.**

COMMITTEE ON ELECTIONS

Hon. JOHN T. HARRIS, of Virginia, chairman.
Hon. CHARLES P. THOMPSON, of Massachusetts.
Hon. JOSEPH C. S. BLACKBURN, of Kentucky.
Hon. JOHN F. HOUSE, of Tennessee.
Hon. REZIN A. DEBOLT, of Missouri.
Hon. EARLY F. POPPLETON, of Ohio.
Hon. G. WILEY WELLS, of Mississippi.
Hon. JOHN H. BAKER, of Indiana.
Hon. WILLIAM R. BROWN, of Kansas.
Hon. MARTIN I. TOWNSEND, of New York.
Hon. GEORGE M. BEEBE, of New York.
Hon. BENJAMIN WILSON, of West Virginia.

H. P. COCHRAN, *Clerk.*

Mr. BEEBE, of New York, resigned as a member of the committee, and Mr. WILSON, of West Virginia, was appointed to fill the vacancy December, 1876.

J. M. SMITH was elected clerk December 10, 1876.

## BROMBERG vs. HARALSON.—FIRST CONGRESSIONAL DISTRICT OF ALABAMA.

Charges of illegal and fraudulent votes, deception practiced upon voters, illegal and undue influences employed by United States officials to intimidate voters, and the presence of United States troops at or near the polls.

The action of a board of supervisors of election, when in due form, is *prima facie* correct and it must stand until it is shown by extrinsic evidence to be illegal and unjust.

The testimony of a conspirator swearing to his own infamy and implicating others in the same crime is always jealously scrutinized, and, unless corroborated in material points by evidence coming from uncontaminated sources, cannot generally be received as sufficient to establish a litigated fact.

Evidence failed to sustain the allegation of intimidation by reason of the presence of a small squad of soldiers at the polls, or by violence on the part of others.

Report adopted April 18, 1876.

Authorities referred to: American Election Laws, pages 306, 394, subdivision 10; New Jersey Cases, 1 Bartlett, page 25; Howard *vs.* Cooper, 1 Bartlett, page 275; McCrary on Elections, pages 343, 416, 424, 586; Harrison *vs.* Davis, 1 Bartlett, page 341; Brown *vs.* Loan, *ib.*, page 482; State *ex rel.* Hopkins *vs.* Olin, 23 Wis., page 326; Revised Statutes, pages 17, 18, 105, 107; Wright *vs.* Fuller, 1 Bartlett, page 152.

March 23, 1876.—Mr. John T. Harris, from the Committee on Elections, submitted the following report:

The contestant specifies fourteen grounds of contest in his notice to the sitting member. The grounds are very vaguely and indefinitely pleaded, being far from having that specific character requisite to a good declaration at common law. But as issue has been taken and proofs made, such legal exceptions to their sufficiency as may have existed have perhaps been waived. The grounds of contest are practically narrowed to the following:

1. That in the county of Mobile more than eight hundred illegal and fraudulent votes were cast for the contestee by minors, by persons not entitled to vote, and by persons voting more than once; and that in said county of Mobile more than two hundred persons were prevented from voting for the contestant by intimidation and deception, or voted for the contestee because of such intimidation and deception.

2. That the entire 976 votes cast for the sitting member in Monroe County were obtained through undue and illegal influences, and were not the expression of the will of the voters; and that 600 of the votes thus cast were illegal and fraudulent, and were cast by minors, by persons not entitled to vote, and by persons voting more than once.

3. That more than 500 fraudulent and illegal votes were cast in Wilcox County for the sitting member, at the precincts of Snow Hill, Pine Apple, and other precincts, by persons not entitled to vote, and by persons voting more than once at said election.

4. That 1,500 illegal and fraudulent votes were cast for the sitting member in Dallas County by minors, by persons not qualified to vote, and by persons voting more than once at said election; that 1,000 illegal votes were cast for the sitting member in said county by persons who were not residents of said county; and that 2,000 voters were prevented from voting for the contestant in said county by intimidation and deception, and that they voted for the sitting member because of said intimidation and deception.

5. That in said district illegal and undue influences were employed by United States and State officials, or by persons representing themselves to be such, adherents of the Republican party, to prevent voters from voting for contestant, or inducing and intimidating voters into voting for the sitting member by threats of prosecution and otherwise, by the presence of United States troops at or near the polls, and by the illegal distribution of provisions among the voters.

The sitting member, in his answer, specifically denies all the material allegations contained in the notice of contest; and also charges that by intimidation, deception, and threats, by undue and illegal influence, by unlawful arrests and threats of unlawful arrest, and by illegal and fraudulent votes cast by minors and persons not qualified to vote, the contestant received many thousand votes which otherwise he would not have received, and the sitting member lost many thousand votes which he otherwise would have received. The affirmative matter brought into the record by the sitting member is embraced in eighteen specifications.

No beneficial result, however, will be attained by a more specific and detailed statement of their nature and scope.

First. The first question considered will be that raised by the grounds of contest relied upon to invalidate a large part of the vote received by the sitting member in the county of Mobile.

The grounds of contest in this county may be resolved, so far as the evidence is concerned, into two principal questions:

1. Whether any, and, if so, how many, votes were cast by persons voting more than once at said election.

2. How many, if any, votes were lost to the contestant by intimidation and deception; and how many, if any, votes were obtained by the sitting member by reason of intimidation and deception.

On behalf of the contestant it is claimed that there was organized a few weeks before the election, in the city of Mobile, a colored club, known by the name of the Union Republican Club, consisting of about two hundred and fifty members, who met usually several times each week to prepare themselves to carry out the objects of their organization. These objects are thus stated in the testimony of Washington I. Squire, the president of the club:

> They (*i. e.*, the members of the club) proposed to increase the Republican vote, first, by themselves voting the Republican ticket; secondly, by inducing all their friends to do the same; and third, by voting for their absent friends, those who were dead, and others who never had existence.

The methods practiced and the instructions given to enable the members of the club to carry out this scheme of fraud are thus stated by the same witness:

> Explanations of the election-laws were given, and while they were never told to vote twice or to deposit fraudulent votes, it was explained to them by what means persons doing the same might escape detection, and the consequences thereto ensuing. On one or more occasions sham elections were held at which the *members were drilled* in the actual business of election-day. Some were judges of election, some inspectors, others clerks, yet others were challengers, others yet were deputy sheriffs and deputy marshals of the United States. The members were divided into two crowds, representing respectively Republicans and Democrats. Some were steady, quiet citizens, standing around the polls looking on; others were noisy and disorderly, and were arrested; others yet were quietly putting in their work. They would come up and vote, pass away, retire and exchange clothes, return, and vote again. If a man was challenged and objected to, and fearful of arrest, he would retire without voting and forthwith assume some other and better disguise. Each crowd were shown how they might deceive the members of the other by pretending that they were voting tickets that in reality they were not; for instance, Republicans would receive the tickets from those representing Democrats, and while pretending to deposit such tickets in the ballot-box, really deposited them in their pockets or in the lining of their hats, substituting therefor Republican tickets. In addition to these sham elections, arrangements were made for preparing lists of registered names for use on said election-day; a majority of these names, although properly registered, were only creations of fancy. Some three thousand names were thus prepared. It was proposed that the squads under the control of competent and energetic leaders should assemble on the morning of the election at an early hour, and having partaken of refreshments, should proceed upon designated routes from poll to poll, voting as often as possible.

It is claimed by the contestant that this club consummated their stupendous scheme of fraud by casting "in the neighborhood of 1,700 fraudulent votes."

It may be proper to preface the examination of the evidence adduced to establish these charges by a reference to certain general principles of law applicable to such contests.

The burden of proof is always upon the contestant or the party attacking the official returns. The presumption is that the officers charged by law with the duty of ascertaining and declaring the result have discharged that duty faithfully. (Am. El. L., §§ 306, 394, subdiv. 10.)

The number of Republican votes cast at the seven wards or polling places in this parish, where the polling-places were taken up and discontinued, was in 1870, as stated by Judge Prescott, according to the official returns, 2,204.

Turning from this parish, let us look at the testimony touching other parts of the district.

In doing this it becomes necessary to refer to and quote from the testimony of Blanchard, Long, Carey, Downs, Cannon, McLaughlin, and others, all or nearly all of whom were in the contestant's party, and the most of whom held some official position under the election-laws.

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared before me Walter Sully Long, who, being duly sworn, upon his oath states as follows:

From March, 1872, to January, 1873, I was chief clerk to B. P. Blanchard, then holding the office of State registrar of voters for the State of Louisiana. In that capaciiy I was in the fullest confidence of my chief, and was aware of all and every transaction of a political nature in the office during the campaign of 1872.

The necessity of carrying the election for the Fusion party was frequently a matter of discussion between Blanchard, myself, and others, and a plan of operations was finally adopted at my suggestion, and carried out, as follows:

I. The sexton's monthly returns of burials of persons over the age of twenty-one years were carefully compiled by wards, the registration-number ascertained and noted, and a list made of them.

II. A thorough examination was made of the registry-book of 1870, in order to ascertain the number of names of fictitious persons registered in that year. In every ward where the persons having control of these false registry-papers were acting with the Fusion party these names were used, but in wards where the supervisors of 1870 were not acting in harmony with the Fusion party, particular care was taken to prevent their using the fraudulent papers, and to detect any attempt at so doing.

III. A system was established requiring all persons who had been registered as voters in 1870, and who had subsequently removed, to deliver up their papers of that year before receiving certificates of registration in 1872. These were sent to the office of the State registrar of voters every week, and were carefully sorted out by myself and others, and all that showed no evidence of having been examined by the United States supervisors of election were set aside, to be used by repeaters on election day.

IV. During the ten days preceding the election a list was made out by me of the registry numbers and names of the dead, removed, and fictitious persons before described, and given to each assistant supervisor of registration for the city wards. Two or more persons in each ward, who were to serve as commissioners of election, were set to work making lists of those names upon sheets of paper similar to that designed to be used on the day of election in keeping the written lists of voters required by law at each polling-place.

V. The poll-lists were printed, containing the entire registration of both 1870 and 1872. No erasures were made until the Saturday and Sunday preceding the election, when the names that could not be made available for the Fusion cause were crossed off in black pencil on the list for certain polls in each ward, and in number to correspond with the written lists of names before alluded to.

These preliminaries having been completed, it was a mere question of manual dexterity on the part of the commissioners of election to get within the box a number of ballots to correspond with the names crossed off in black from the printed lists, and written in advance upon the tally-lists.

The estimate of the number of votes required to carry the election was as follows:

For the First ward, 500; Second ward, 500; Third ward, 1,000; Tenth ward, 500; Eleventh ward, 500; Twelfth ward, 250; Thirteenth ward, 100; Fourteenth ward, 50—making a total of 3,400 for the up-town wards; and for the Fourth ward, 300; Fifth ward, 500; Sixth ward, 500; Seventh ward, 500; Eighth ward, 600; Ninth ward, 600; Fifteenth ward, none—a total of 3,000, and an aggregate of 6,400. To this must be added the number of papers to be voted on by "repeaters," which was estimated at 2,000.

VI. The number of fraudulent votes actually counted, and which can be proved by my own testimony and that of other persons concerned, is—

| | |
|---|---|
| In the First ward | 281 |
| In the Second ward | 243 |
| In the Third ward | 803 |
| In the Tenth ward | 306 |
| In the Eleventh ward | 330 |
| In the Twelfth ward | 101 |
| In the Thirteenth ward | 98 |
| In the Fourteenth ward | 26 |
| Total up-town | 2,188 |
| In the Fourth ward | 186 |
| In the Fifth ward | 155 |
| In the Sixth ward | 336 |
| In the Seventh ward | |
| In the Eighth ward | 393 |
| In the Ninth ward | 244 |
| In the Fifteenth ward | |
| | 1,314 |
| Grand total | 3,502 |

Beyond this, the papers given to repeaters were about 2,000. I cannot at present remember the exact number, but I think that 1,400 were given out to be used in the first, fourth, and sixth municipal districts, and 600 to be used in the second and third districts.

I further know, and can produce, I believe, the men who acted as commissioners of election at the polls in each ward where fraudulent votes were cast or counted at the general election of November 4, 1872.

WALTER S. LONG.

Sworn to and subscribed before me this 4th day of September, 1873, at New Orleans, La.

F. A. WOOLFLEY,
*U. S. Commissioner.*

## Brainard P. Blanchard, another witness, whose capacity for the sort of work required of him will hardly be questioned, swears:

That he was appointed by Henry C. Warmoth, governor of the State of Louisiana, to the office of State registrar of voters, being also ex-officio supervisor of registration in and for the parish of Orleans; that he filled the said office during the years 1870, 1871, and 1872; that in the last-named year he was in full political sympathy with the liberal movement, and, subsequently, upon the Fusion of the liberal and Democratic parties, with what was known and styled the Fusion party, and, in conjunction with others of the same political party, devised plans for carrying the general election of November 4, 1872, in favor of said Fusion party and their candidates, by taking advantage of all the powers with which he was invested by the acts of the general assembly, numbered, respectively, acts No. 99 and 100, approved March 16, 1870, and known as the registration and election laws of 1870.

That, in furtherance of this scheme, he caused a careful compilation of the list of deceased males over twenty-one years of age who had died since the close of registration in 1870, which lists were required by law to be furnished to him by the sextons of the various cemeteries in the parish of Orleans; and that said lists so compiled were carefully collated with the registration books, and the registry-number and the election-precinct in which the deceased was registered noted.

That instead of carrying out to the full letter the provisions of section 7 of the registration-law, he caused to be erased from the lists of registered voters only the names of such deceased electors as were well known in the community, but in cases where the deceased was an obscure personage (a large majority of the whole number), he caused to be made out a duplicate registration-certificate in his name; the same to be retained and used at the general election, as is hereinafter set forth.

## Further on deponent says:

Deponent further says that to his knowledge a large number of certificates of registration had been issued in 1870 in the names of fictitious persons; that he caused a careful examination of the books of registration to be made, and of other records and memoranda in his possession, to ascertain the quantity of such fraudulent registries, and also made efforts to ascertain in whose possession such papers in the names of fictitious persons were,

and did obtain possession of some two thousand such papers; and in relation to such of said papers which he could not obtain possession of, the following course was pursued, to wit, whenever he ascertained that they were in the hands of persons belonging to the Republican party, he then and during registration caused the said fictitious names to be erased from the registry lists as fraudulent; but in all cases when he ascertained that such papers were in the possession of persons in the interest of the Fusion party, he instructed the assistant supervisors of registration not to erase such fictitious names from the books, in cases where he had confidence in those officers; but in cases where he had reason to suspect the fidelity of any assistant supervisor, or to believe any of them would not assist in or abet such work, he prohibited them from making any erasures whatever, reserving that work for himself, or assigning it to some confidential clerk or confidential agent whom he could implicitly trust, as will more fully appear by the documents hereto annexed and marked A and B.

The witness then goes into a lengthy detailed statement of the frauds actually perpetrated by the political managers of the Democratic or Fusion party in the election of 1872, and closes with the following statement:

Deponent further says that he believes, and has reason to believe, and knows, that, had not the fraudulent practices as above recited been resorted to and made use of by persons in the interest of the Fusion party and for the benefit and advantage of said Fusion party as hereinbefore set forth, and had the election returns been properly and fairly made by the supervisors throughout the State, and had the large Republican parishes which were thrown out unjustly, unfairly, and for the purpose of reducing the Republican vote, been counted as they should have been, the candidates for Presidential electors, members of Congress, and State officers upon the Republican national and State ticket would have been shown to have been elected by a large majority of the votes cast in the State at the election held on the 4th of November, 1872.

And deponent further says that he believes, has reason to believe, and knows, that the Republican national and State tickets received a considerable majority of the votes actually cast at the election held on the 4th day of November, A. D. 1872, in the State of Louisiana.

B. P. BLANCHARD.

Sworn to and subscribed before me on this 2d September, 1873; and I hereby certify that the affiant, B. P. Blanchard, was State registrar of voters, &c., during the years 1870, 1871, and 1872.

Witness my hand and seal at the city of New Orleans, on the day first above named.

[SEAL.] F. A. WOOLFLEY,

*United States Commissioner, Chief Supervisor of Elections, District of Louisiana.*

William L. Catlin, another witness, testifies as follows:

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared before me, the undersiged authority, W. L. Catlin, a resident of the city of New Orleans, who being duly sworn deposes and says: That he was in full sympathy with the so-called Fusion party at the last general election of November 4, 1872, in the State of Louisiana; that he was, during the same year, an intimate, personal, and business friend of B. P. Blanchard, then State resistrar of voters, and as such aided him in many ways in carrying out his plans for securing the success of the Fusion party at the said election; and that, among other things, he aided in the preparation, labeling, and supplying with stationery, &c., the regular ballot-boxes for said election, and attended to their distribution to the various wards. There were in all one hundred and seventeen ballot-boxes used in the city of New Orleans; and that, in addition thereto, he attended to the distribution of sundry additional or duplicate boxes on Sunday night, November 3, for use at the said election, as he understood, to further promote the success of said party, by substituting or otherwise, and delivered some of them personally to the parties whom it was intended should use them.

W. L. CATLIN.

Sworn to and subscribed before me this 3d day of September, 1873.

F. A. WOOLFLEY,
*United States Commissioner.*

Henry L. Down, another witness, in the employ of Blanchard, engaged in the business of aiding the Fusionists or Democrats, says:

Q. How many names of colored registered voters were improperly stricken from the rolls in the Fourth ward?—A. I have the figures here that I made out myself some time ago.

Q. You can use them in refreshing your memory now in answering my question.—A. Three hundred and nine in the Fourth ward were stricken from the rolls in that manner.

Q. And in the Fifth ward how many?—A. Two hundred and twenty-three.

Q. And in the Sixth ward?—A. Three hundred and fifty-three.

Q. And in the Seventh ward?—A. Three hundred and eighty-six.

Q. And in the Eighth ward?—A. One hundred sixty-four.

Q. And in the Ninth ward?—A. One hundred and twenty-two.

Q. In all, how many?—A. One thousand five hundred and fifty-seven.

Q. Were those names stricken off arbitrarily?—A. They were ordered to be stricken off.

Q. Was any evidence taken to ascertain whether they were entitled to vote before this action was had?—A. I don't know.

Q. By whose order were those names stricken off?—A. It was after a consultation with the Fusion committee, Dr. Walker and others.

Q. Do you know whether any fraudulent duplicate certificates were isssued?

(Mr. Rice objected to the question as leading.)

Q. Do you know whether any such thing was ever done or not for the first Congressional district?—A. I do.

Q. Do you know whether any were issued in the wards within the first Congressional district of this city?

(Objected to as leading.)

A. I do.

Q. State succinctly the manner in which such fraudulent or duplicate certificates were issued.—A. I can state how they were obtained. I decline to state how they were issued.

Q. State how they were obtained.—A. They were obtained by persons moving from one ward to another. According to the requirements of the registrars, each of these persons moving from one ward to another were to give up their original certificate and get a new one. These original certificates were sent to the central office of the State registrar of voters. Some of them were cancelled, but many of them were reissued in this manner to be voted upon again.

Q. How many of such certificates were issued?—A. I should judge about three thousand of them.

Q. Can you approximate the number that was issued for the Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth wards?—A. I should think there was about one thousand or twelve hundred used in those wards.

Q. To whom were those certificates given?—A. I decline to answer that question.

Q. Were they issued to Republicans, or Democrats, or Fusionists?—A. They were issued to parties that I presume were in the Fusion interest. I had no reason to doubt that they were.

Q. Were any issued to candidates on the Fusion ticket, as far as you know?—A. Yes, sir.

* * * * * * *

Q. Did you ever make an affidavit in regard to the conduct of the election on that day?—A. I did.

Q. Where did you make such an affidavit?—A. I made it before Commissioner Woolfley.

Q. Is this printed copy now shown you a copy of the affidavit that you made?—(Shown affidavit of Henry L. Downs, contained in printed pamphlet marked X, Y, Z, annexed to the testimony taken March 30, 1874.)—A. I see no mistake in it; it seems to be correct, according to my affidavit.

Q. Are you willing to reiterate the statements made in that affidavit?—A. I am, and I will.

Judge Dibble offered the affidavit referred to, and the following is a copy Mr Rice making the same objections that he had made to the introduction o the affidavit of B. P. Blanchard:

UNITED STATES OF AMERICA,
*District of Louisiana:*

Personally appeared, this the 21st day of June, 1873, before me, the undersigned authority Henry L. Downs, who, being duly sworn, deposes and says: That, during the registration preceding the election of November 4, 1872, he was a clerk in the office of State registrar of voters for the State of Louisiana; that during the two months of registration certificates and duplicates of registration accumulated in said office. They were collected by the assistant supervisors of registration of the different wards of the city of New Orleans, from voters changing their residence from one ward to another, to whom a new certificate would be furnished and the old one forwarded to the office of State registrar of voters, who was *ex officio* supervisor of registration for the parish of Orleans, or city of New Orleans. These certificates and duplicates accumulated to the number of several thousand, and completely filled a large-sized ballot-box.

Deponent further states that he assisted in assorting them, according to wards and availability for use by repeating voters. Some were cancelled, as being considered unsafe to use, or as having been marked in some manner by the United States supervisors; others (and

to have been bribed and corrupted to vote for the sitting member, is Monroeville, the county-seat. It is established by the evidence before the committee that a report was industriously circulated among the colored voters that in order for them to obtain bacon they would have to vote the straight republican ticket; that if they received bacon, and afterward neglected or refused to vote the republican ticket, they would forfeit their legal rights; that they should come to Monroeville on election-day, and that Perrin would give them a big barbecue and meat enough to last them a year. It seems that no effort was made by the republican leaders to correct these reports and disabuse the minds of the colored voters of their truth. It is testified by Perrin and many others that, in their opinion, the belief in the truth of these reports induced the colored voters to cast for the sitting member at least eight hundred votes more than he would otherwise have received. The evidence fails to connect the sitting member with these reprehensible practices. But it is apparent that these corrupt practices did have an influence to swell the vote of the sitting member at this precinct. There are but a few voters who are shown to have been directly influenced to vote otherwise than they would have done by these means. It is apparent that more were corrupted than can be distinctly proved to have been influenced. It is probable that the truth lies between the extremes. On the one hand it is claimed that at least 800 votes were obtained for the sitting member by corruption and bribery; on the other it is claimed that this estimate is proved by the mere opinions of witnesses, and that the evidence does not point distinctly to more than ten or twelve voters who are shown to have been thus corrupted. It perhaps would be fair to assume that the whole vote cast at this precinct in excess of the vote of two years before, when no such influence existed, was cast by voters who came there under the influence of the corrupt practices and promises disclosed in the evidence. At the Congressional election held in that precinct in 1872, the total vote polled was 516, and at the Congressional election in 1874, the total vote polled was 848. The excess in 1874 over the vote of 1872 is thus shown to be 332. The practice indulged in by Perrin and others to corrupt the colored voters in this county is of a most shameless and reprehensible character. It strikes at the foundations of republican government, and poisons the very sources whence all legitimate authority flows. No system of government can long endure where public opinion tolerates such conduct. Its general prevalence must lead to anarchy and bloodshed, and loosen the very ligaments binding society together. It stikes a fatal blow at the social compact. It overturns all just distinctions between honesty and corruption in the delegation of authority to the representatives of the people. No language can too strongly express our disapproval of the practices indulged in to corrupt the purity of the ballot-box, at Monroeville in particular. Votes thus obtained, even if cast by legal voters, it would seem ought to be rejected as illegal and void, even though it is not shown that the candidate who received them knew or consented to the corrupt practices whereby they were obtained. Such is the rule of law laid down in the unanimous judgment of a highly respectable court of last resort in one of the States of the Union. In that case it is said:

In our form of government, where the administration of public affairs is regulated by the will of the people, or a majority of them, expressed through the ballot-box, the free exercise of the elective franchise by the qualified voters is a matter of the highest importance. The safety and perpetuity of our institutions depend upon this. It is, therefore, particularly important that every voter should be free from any pecuniary influence. For this reason, the attempt by bribery to influence an elector in giving his vote or ballot is made an indict-

able offense. * * * Can a vote thus obtained, in direct violation of the statute, be considered a valid or legal vote? If it can, then the very object of the statute, which is that it should not be so obtained, is defeated. We are of opinion that such votes are illegal, and that the judge was right in directing the jury to disregard them. This conclusion is sustained by the authorities, so far as we have been able to find any. (State ex rel. Hopkins *vs.* Olin, 23 Wis., 326.)

The *lex parliamentaria* of England seems to require that the bribery which will justify the rejection of a vote shall be practiced by the candidate to be affected, or by his agent. It is not necessary to the decision of this case to determine which rule should be applied in election cases depending before this House; and hence the committee express no judgment upon it. If it should be held that 332 votes cast at this precinct should be thrown out, or that every vote cast for the sitting member should be rejected, it would not affect the result at which the committee have arrived. There was a small squad of United States soldiers stationed at Monroeville, and on the day of the election they were in the neighborhood of the polls. But the evidence fails to show any disorderly or threatening conduct on their part, and it is apparent that no man of ordinary firmness was or could have been thereby intimidated from voting. The allegation that the presence of this small squad of soldiers intimidated a large number of Democratic voters and kept them from voting the Democratic ticket, is not sustained. Indeed, in the year 1872 the contestant received, at the Monroeville precinct, 214 Democratic votes only, while, in 1874, at the same precinct, he received 218 votes.

The evidence fails to sustain the allegation that bands of colored men were armed, mustered, and drilled through the county shortly prior to the election, whereby Democratic voters were intimidated and kept from voting. Nor is there sufficient proof to satisfy the committee that the threats that warrants were in the hands of the United States deputy marshal for the arrest of white men did intimidate any voter of ordinary firmness so as to keep him from voting.

It is true that Perrin testifies that the colored voters had unbounded confidence in him, and that he has no doubt he could have controlled 900 votes which were cast for the sitting member, for the contestant. This seems to be the idle boasting of a bold and unscrupulous man. If true, however, it is only another instance to be added to the long catalogue of cases where simple and uneducated men have erroneously given their confidence to designing villains. While men who thus abuse the sacred confidence reposed in them deserve the most condign punishment, it furnishes no ground for the rejection of the votes cast by those who confide in them. It would be dangerous to establish the precedent that a legal voter should lose his ballot because he voted upon false information, or because a party leader abused the confidence reposed in him. We cannot believe that if the boast of Perrin were true, it ought to affect the validity of the ballots cast by the colored voters.

From these considerations it follows that in the judgment of the committee, no sufficient evidence has been produced to warrant the rejection of any votes cast in Monroe County, except at the Monroeville precinct.

The next county to which the attention of the committee was directed is Wilcox. It is alleged "that more than 500 fraudulent and illegal votes were cast for the sitting member in the county of Wilcox, at the precincts of Snow Hill, Pine Apple, and other precincts, by persons not entitled to vote in said county, and, by persons voting more than once at said election."

This is the only specific charge made as to this county. It is true that the twelfth ground of contest was doubtless aimed to embrace this as well as all other counties in the district. The twelfth ground of contest is as follows:

Twelfth. That illegal and undue influences were employed by United States and State officials or by persons representing themselves to be such, adherents of the Republican party, to prevent voters in this district from voting for me (the contestant), or inducing or intimidating voters into voting for you (the contestee), by threats of prosecution and otherwise, by the presence of detachments of United States troops at or near the polls, and by the illegal distribution of provisions donated by act of Congress to sufferers by the overflow of the Tombigbee and Alabama Rivers, in 1874.

There is no proof to sustain the specific allegation—

That more than 500 fraudulent and illegal votes were cast for the sitting member in Wilcox County, by persons not entitled to vote, and by persons voting more than once at said election.

The twelfth specification is too vague and uncertain to be good. The statute requires that the contestant, in his notice, "shall specify particularly the grounds upon which he relies in his contest." (Rev. Stat., pp. 17, 18, § 105; McCrary, § 343; Wright *vs.* Fuller, 1 Bartlett, 152.)

It is impossible to conceive of a specification of the grounds of contest broader or more general in its terms. It fixes no place where any act complained of occurred. It embraces the whole district in one sweeping charge. This specification embraces three general grounds of complaint, not one of which possesses that particularity essential to good pleading; but it can subserve no valuable purpose to pursue the question of legal sufficiency of this specification further, because there is another ground upon which the whole evidence of the contestant, relating to the election in this county, must be rejected. The sitting member served his answer to the notice of contest on the contestant on the 23d of December, 1874. The statute gives ninety days next after the service of the answer, in which to take the testimony. (See act of February, 1875.) This period is to be divided as follows: The contestant shall take testimony during the first forty days; the returned member during the succeeding forty days, and the contestant may take testimony in rebuttal only during the remaining ten days of said period. (Rev. Stat., p. 18, § 107.) During the first forty days the contestant took no testimony in Wilcox County or elsewhere to sustain any specification in his notice of contest affecting the election in said Wilcox County. His entire evidence was confined to the election held in other counties. During the succeeding forty days the returned member did not take any testimony in Wilcox County or elsewhere relating to the election held in said county of Wilcox; and yet, on the 15th and 16th days of March, 1875, the contestant caused notices to be served on the attorney of the returned member that on the 22d of March, 1875, he would take testimony in said county of Wilcox. Both notices specify that the witnesses therein named "will be examined in rebuttal of the testimony taken" by the returned member. Knowing that he had taken no testimony in relation to the election in Wilcox County at all, and hence that there was nothing to rebut, the returned member did not attend the taking of the testimony of contestant in said county. In violation of the statute, and contrary to the terms of the notices served upon the attorney of the sitting member, the contestant took a large number of *ex parte* depositions or affidavits for the purpose of proving the truth of the general charges embraced in the twelfth specification above quoted. The whole of the testimony taken in Wilcox County is *directed exclusively* to the proof of the contestant's original case, and

no portion of it is directed to the rebuttal of the proofs adduced by the returned member. The rules of law and the principles of common fairness alike require that the whole of contestant's testimony relating to the election in Wilcox County should be entirely rejected, first, because the time within which the contestant could lawfully take testimony to prove his original case had long previously expired; and, second, because the notices explicitly state that the witnesses were to be examined in rebuttal, and under such notices in the absence of the returned member it would be to give sanction to a surprise to allow any other than rebutting testimony to stand. And, in addition thereto, the contestee would have no right or opportunity to introduce evidence in answer to the original evidence thus taken during the ten days prescribed by law for taking of rebutting testimony.

The only remaining county in which the contestant took testimony to impeach the fairness of the election is Dallas. The particular charges in relation to this county are as follows:

Fourth. That 1,500 illegal and fraudulent votes were cast for the returned member by minors, by persons not qualified to vote at said election, and by persons voting more than once for the returned member at said election in the county of Dallas.

Fifth. That in said county of Dallas 1,000 illegal votes were cast for the returned member by persons who were not residents of said county, or entitled to vote at said election in said county.

Sixth. That in said county of Dallas 2,000 voters were prevented from voting for the contestant by intimidation and deception, and at said election voted for the returned member because of said intimidation and deception.

As to the fourth specification, after a very careful and minute examination of the testimony, the committee are convinced that it is not substantially proved. The testimony tends to show that there were twenty minors who voted in this county; but it is not clearly proven that even these persons were minors. The testimony offered to prove that they were minors was merely the opinions of bystanders who formed their conclusions from the appearance of the parties. They were, however, challenged and took an oath that they were twenty-one years of age. The committee believe that the proof is too vague and uncertain to justify them in striking off any vote as having been cast by a minor.

There is testimony tending to prove that nine colored men voted at the election who were not *bona fide* residents of the county of Dallas. The evidence shows that at some period before the election they had resided in adjoining counties. But these parties took, when challenged, the requisite oath of residence to entitle them to vote, and upon the proof it would be unsafe to hold that they were not legally entitled to vote as they did. The testimony fails to establish the fact that any person voted more than once at this election. The election seems to have been, on the whole, peaceably and fairly conducted.

The fifth specification is a mere repetition of a portion of the fourth, namely, that 1,000 votes were cast for the returned member by persons who were not residents of Dallas County, and not entitled to vote at the election held for member of Congress. Under the fourth specification we have said all that we deem necessary to dispose of so much of this charge as relates to illegal votes cast by non-residents, who were specifically and by name pointed out by the testimony. But there was a large body of testimony produced before the committee which tended in some degree to raise an inference that a large number of votes had been cast by non-residents of the county. This testimony is susceptible of being grouped into two general classes:

1. The testimony of a large number of witnesses showing quite a large emigration of colored people from this county since the year 1869.

In the opinion of the witnesses the number was from 2,000 to 3,000, of whom it is estimated that from one-half to three-fourths were colored voters.

2. The second class of testimony is that of railroad officers, steamboat men, and other persons engaged directly or indirectly in procuring and sending away colored laborers into Western States, particularly Mississippi and Louisiana.

It is quite apparent that it would be unsafe to hold that illegal votes had been cast, on deductions drawn from testimony so infirm. The number of persons removing into the county would have to be ascertained; also how many of those who went abroad to seek labor went away temporarily and afterward returned would have to be determined; and, in addition to this, it would be necessary to determine how many, who were minors in 1869, had attained their majority in 1874. With so many elements of uncertainty, the committee do not realize the force which the contestant attached to this class of proofs. It lacks every element of probative force essential to correctness and certainty of judgment in a judicial decision. At most it can only raise an inference, and a weak one, that there may have been non-resident votes cast. It cannot be claimed that the charge of non-residents voting is established by such clear and satisfactory proofs that the judgment assents to the truth of the charge. Hence your committee feel constrained to hold that the charge is not made out.

And this conclusion is fortified by some additional considerations. It is clearly established that, since the enfranchisement of the colored voters, parties have been divided in this county very nearly on the color line. The whites vote the Democratic or Conservative ticket, and the negroes vote the Republican ticket. The evidence before the committee shows that there were in this county 7,031 registered colored voters. In this county in 1870 the Republican candidate for Congress received 7,372 votes, and the Democratic candidate 2,095. In the year 1872 there were two Republican candidates for Congress, and one Democratic candidate. Mr. Bromberg, the Democratic candidate, received 1,928 votes, and Philip Joseph 29, and Benjamin S. Turner 7,050. In 1874 Mr. Bromberg, the Democratic candidate, received 1,842 votes, and Mr. Haralson, the sitting member, 6,819. These facts leave no doubt upon the mind of the committee that the vote was not appreciably swelled by non-residents voting.

As to the charge of intimidation, we find that is unsustained by the evidence. There is testimony showing that the canvass was a heated one; that much bitter and inflammatory language was indulged in; that threats were made by colored men to deter voters of their own race from voting the Democratic ticket; that on one occasion, while making a speech, the sitting member indulged in violent and denunciatory language as follows: Any colored man who will vote the Democratic ticket ought to be hung, and I am in favor of it, and all who agree with me will rise, whereupon a large part of his audience rose to their feet in assent, and that the colored voters were told that, if the Democratic party gained control of the government, the colored people would be reduced to a worse condition than when in slavery. It appears that some three or four colored men were intimidated from voting the Democratic ticket, and were thereby made to vote the Republican ticket. But the evidence fails to disclose any such condition of violence and intimidation as would seriously interfere with the fairness of the election. The unsettled condition of affairs there is doubtless largely due to the ill-adjusted relation of the two races, and to the efforts made by interested parties actuated

by selfish ends to perpetuate their power by appeals to the passions and prejudice of race. While these are to be deplored, and while every well-wisher of his country's honor and prosperity must earnestly wish to see peace, good order, respect for law, and fraternal feelings restored, still no such violence or intimidation existed as, under the well-settled rules of law, would justify the rejection of votes from the sitting member in consequence thereof.

In conclusion, and without entering into any recapitulation of the votes rejected by the committee in the several precincts in this district, the committee content themselves with the statement that when all such illegal votes have been rejected, it still lacks much of overcoming the majority of nearly 2,700, which the sitting member received; and it is believed no beneficial purpose would be subserved by any more minute analysis of the votes which we agree should be rejected.

And your committee have unanimously agreed to report to the House the following resolutions:

*Resolved*, That Frederick G. Bromberg was not elected a member of the Forty-fourth Congress of the United States, and is not entitled to a seat in this House.

*Resolved*, That Jere Haralson was elected a member of the Forty-fourth Congress of the United States, and is entitled to a seat in this House.

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## FINLEY vs. WALLS.—SECOND CONGRESSIONAL DISTRICT OF FLORIDA.

Charges of fraud, irregular conduct of election officers, and illegal count. Names of qualified voters left off the registry-list, and minors, felons, and convicts permitted to vote.

The committee held that fraud proven to have been committed by and with the knowledge of the officers of an election in conducting the election, no reliance can be placed upon any of their acts, and their return must be rejected as wholly unreliable. Actual vote must be proven in some other way.

Majority and minority reports submitted.

Minority report reject April 19, 1876—yeas 84, nays 135; not voting, 71.

Majority report adopted April 19, 1876.

Jesse J. Finley sworn in.

Authorities referredto:—Bush's Digest, sec. 6, chap. 66, pages 299, 300, 303: Acts of 1872, chap. 1868, No. 6, sec. 4; American Law of Elections, secs. 87, 298, 303, 304, 305; New Jersey case, 1 Bartlett, page 25.

March 23, 1876.—Mr. Thompson, from the Committee of Elections, submitted the following report:

*The Committee of Elections, to whom was referred the case of Jesse J. Finley vs. Josiah T. Walls, in which said Finley claims the right to be admitted to the seat as Representative from the second Congressional district of Florida, report:*

The laws of the State of Florida provide that "every male person of twenty-one years and upward, of whatever race, color, nationality, or previous condition, who shall, at the time of offering to vote, be a citizen of the United States, or who shall have declared his intention to become such, in conformity to the laws of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida one year, and in the county for six months,

next preceding the election at which he shall offer to vote, shall in such county be deemed a qualified elector at all elections, provided the following classes of persons shall not be entitled to vote: First, persons under guardianship; second, persons who are insane or idiotic; third, persons hereafter convicted of felony, bribery, perjury, larceny, or other infamous crime." (Section 6, chapter 66, Bush's Digest, pages 299, 300.)

It is also provided—

"SEC. 8. No person shall be entitled to vote at any election unless he shall have been duly registered six days previous to the day of election.

"SEC. 9. The county commissioners, or a majority of them, shall meet at the office of the clerk of the circuit court within thirty days preceding the day on which any election shall be held, and examine the *list of registered electors*, and *erase therefrom* the names of such persons as are known or may be shown to their satisfaction to have died or ceased to reside permanently in the county, or otherwise become disqualified to vote: *Provided*, That if any person, whose name may be erased, shall, on offering to vote at any election, declare on oath that his name has been *improperly struck off from the list* of registered voters, and shall take the oath required to be taken by persons whose right to vote shall be challenged, such person shall have the right to vote, and on making oath before the clerk of the court that his name has been improperly erased from the list of registered voters, may have his name again entered upon said list; and the county commissioners shall, at the same meeting, appoint a board of three discreet electors to be inspectors of the election for each place designated for voting within the county, and shall also at said meeting designate so many places for holding such election within the county as may be deemed necessary for the convenience of the electors, and shall cause three notices of such designation and appointment of inspectors to be posted conspicuously in the vicinity of each place so designated twenty days before the election."

Section 10 provides that "a copy of the list of names of all persons duly registered as electors shall be furnished to the inspectors of election at each poll or place of voting in the county before the hour appointed for opening the election. The clerk shall prepare and certify such copies, and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause one such list to be delivered to one of such inspectors before the time for opening the election."

Section 11 provides: "In case of the death, absence, or refusal to act of any or all of the inspectors appointed by the county commissioners, the electors present at the time appointed for opening the election may choose, *viva voce*, from the qualified electors, such a number as, together with the inspector or inspectors present, if any, will constitute a board of three, and the persons so chosen shall be authorized to act as inspectors of that election. The inspectors shall, before opening the election, choose a clerk, who shall be a qualified elector, and said inspectors and clerk, previous to receiving any votes, shall each take and subscribe an oath or affirmation in writing that they will perform the duties of clerk or inspectors of election according to law, and will endeavor to prevent all fraud, deceit, or abuse in conducting the same. Such oath may be taken before any officer authorized to administer oaths, or before either of the persons chosen as inspectors, and shall be returned with the poll-list and the returns of the election to the clerk of the circuit court. One of the inspectors shall be chosen as chairman of the board."

Section 12 provides that "the polls of the election shall be opened at

8 o'clock a. m. on the day of the election, and shall be kept open until sunset of the same day; but the board may adjourn between twelve and one o'clock for half an hour. The inspectors shall cause proclamation to be made of the opening and closing of the polls, and of the adjournment. During an adjournment the ballot-box shall be sealed and kept in the possession of an inspector, who shall not have the key thereof, but the box shall not be concealed from the public."

Section 13 provides that the names of all persons voted for shall be on one ballot.

Section 14 provides that the election shall be by ballot, and the ballot shall designate the office to which the person voted for is intended to be chosen.

Section 15 provides that a vacancy shall be filled in same manner.

Section 16 provides, "if any person offering to vote shall be challenged as not qualified, by an inspector or by any other elector, one of the board shall declare to the person challenged the qualifications of an elector. If such person shall claim that he is qualified, and the challenge be not withdrawn, one of the inspectors shall administer to him the following oath: 'You do solemnly swear that you are twenty-one years of age; that you are a citizen of the United States [or that you have declared your intention to become a citizen of the United States, according to the acts of Congress on the subject of naturalization]; that you have resided in this State one year, and in this county six months next preceding this election; that you have not voted at this election, and that you are not disqualified to vote by the judgment of any court.' If the person challenged shall take such oath, his vote shall be received.

"SEC. 17. There shall be provided by the county commissioners as many ballot-boxes as there shall be places for voting in that county, which boxes shall each be provided with a suitable lock and key. There shall be an opening through the lid of each box, no larger than to conveniently admit a single closed ballot. After the close of any election and canvass, inspectors shall return such boxes to the clerk of the circuit court, together with the returns of such election. One of such boxes, with the key thereof, in good order, shall be furnished to the inspectors of election before the holding of any general or special election.

"SEC. 18. Before opening the polls of any election, the ballot-box shall be publicly opened and exposed. And nothing shall remain therein; it shall be thus locked, and the key thereof delivered to one of the inspectors, and said box shall not be opened until the close of the election.

"SEC. 19. When a ballot shall be received, one of the inspectors, without opening the same or permitting it to be opened, shall deposit it in the box. When any person shall have voted, his name shall be checked upon the list by one of the inspectors, and the clerk shall make a list of the names of the persons voting; and if such elector shall have been challenged and sworn, the clerk shall make note thereof, as follows: If the person shall swear that he is a citizen of the United States, the letter C shall be entered opposite his name in the list kept by the clerks; if he swear that he has declared his intention to become a citizen, then the letter D shall be entered opposite his name upon said list."

Section 20 provides that the inspectors shall have authority to maintain good order at the polls.

"SEC. 21. As soon as the polls of an election shall be finally closed, inspectors shall proceed to canvass the votes cast at such election, and the canvass shall be public and continued without an adjournment until completed. The votes shall be first counted; if the number of ballots

shall exceed the number of persons who shall have voted, as may appear by the clerk's list, the ballots shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy unopened so many of such ballots as shall be equal to such excess.

"SEC. 22. If two or more ballots shall be folded together, so as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed, and if, upon comparison of the count and the appearance of such ballots, a majority of the board shall be of the opinion that the ballots thus polled together were voted by one person, such ballots shall be destroyed.

"SEC. 23. The canvass being completed, duplicate certificates of the result shall be drawn up by the inspectors or clerks, containing in words written at full length, the name of each person voted for for each office, the number of votes cast for each person for such offices, which certificates shall be signed by the inspectors and clerk, and one of such certificates shall, by one of their number, be without delay delivered, securely sealed, to the clerk of the circuit court, and the other to the county judge of the county; and the poll-list and oaths of the inspectors and clerks shall also be transmitted with the certificate to the clerk of the circuit court, to be filed in his office.

"SEC. 24. On the sixth day after an election, or sooner, if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of the said clerk, and take to their assistance a justice of the peace of the county (and in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place), and shall publicly proceed to canvass the votes given for the several offices and persons, as shown by the returns on file in the office of such clerk or judge, and shall then make and sign duplicate certificates, containing, in words and figures written at full length, the full number of votes given for such office, the names of the persons for whom such votes were given for such office, and the number of votes given to each person for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the secretary of state, and the other to the governor of the State." (Chap. 66, Bush's Digest.)

"On the thirty-fifth day after the holding of any general or special election for any State officer, member of the legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. If any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers. The said board shall make and sign a certificate, containing in words written at full length the whole number of votes given for each office, the number of votes

given for each person for each office, and for member of the legislature, and therein declare the result, which certificate shall be recorded in the office of the secretary of state, in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government." (Acts of 1872, chapter 1868, No. 6.)

The second Congressional district is composed of seventeen counties, viz, Alachua, Baker, Brevard, Bradford, Columbia, Clay, Duval, Dade, Hamilton, Madison, Marion, Nassau, Orange, Putnam, Suwannee, Saint Johns, and Volusia.

The contestant, as his grounds of contest, makes seventeen specifications, to which the contestee has severally answered. It will be necessary to consider each specification separately. The first specification is, in substance, that the State canvassers illegally counted and canvassed illegal returns from certain precincts in Alachua County, and thereby gave the contestee a majority of votes, when in truth and in fact he had not a majority. Your committee are of opinion that whatever may be said as to the right of the county canvassers to reject the returns from said precincts, the State canvassers had no right to canvass them, and that the certificate of election should have been given to the contestant and not to the contestee (sec. 4, chap. 1868, acts of 1872); still, they are called upon now to go behind the canvass of both the county and State canvassers and ascertain if possible the actual vote at said precincts. The second specification relates to Gainesville precinct, No. 3, in Alachua County, which is as follows:

That said election at precinct No. 3, at Gainesville, within the county of Alachua, and within said second Congressional district of Florida, was irregularly and illegally conducted, and was null and void, and I hereby notify you that I will ask that all the votes cast at said precinct be rejected on the following grounds, viz: 1st. Because no poll book or list of the names of the electors voting at said precinct was returned to the judge of the county court or to the clerk of said county, with the certificates of the election at said poll, as the law requires, but a paper list of names was found eight (8) days after said election, unsigned by any of the officers of the election at said precinct; 2d, because a large number of illegal votes at said election were received and counted at said poll, viz, about fifty-eight (58) votes not registered, and five (5) not checked, as the law requires, were received at said poll, and changed the result of the election at said poll, and only three (3) appeared to be sworn, and because the oath administered to the unregistered voters who voted at said poll was not such as the law prescribes.

To which the contestee answers in substance that it is untrue that said election was irregularly and illegally conducted, or was null and void. He admits that the poll-book was not returned to the judge of the county court nor to the clerk of the county with the certificate of the election at said precinct, but alleges that the same was found eight days after said election, and that this irregularity is not such as will affect the rights of the contestee. He also objects to proof of any illegal votes, as it does not appear from the contestant's said specifications for whom said illegal votes were cast. A poll may be purged of illegal votes without it being proved for whom they were cast. (Am. Law of Elec., sec. 298.)

The not returning of the poll list, although an irregularity which might, connected with other irregularities, be entitled to very considerable weight, still, in this case, it being shown that the poll-list used at this precinct was found and used by the county canvassers in canvassing this precinct, and there being no evidence that it had been tampered with, or was by reason of fraud not returned in the ballot-box, the committee have not regarded it as a sufficient reason for rejecting said poll. A more difficult question is presented in relation to this poll. It is clear from the evidence that some sixty persons voted at this precinct

whose names were not on the certified copy of the registration-list used at this precinct. This appears from the deposition of Peter G. Snowden, page 74.

*Deposition of Peter Snowden.*

PETER G. SNOWDEN, of Alachua County, Florida, being duly sworn, deposeth and says:

I was in Gainesville, Alachua County, Florida, on the 3d day of November, A. D. 1874, and acted as supervisor at poll or precinct No. three (3), in Gainesville, at the election held there on that day for Representative in Congress from the second Congressional district of the State of Florida; and I paid close attention to the general conduct of the election on that day at that poll or precinct.

Question. Were there or were there not a considerable number of persons who voted at that precinct on that day whose names could not be found on the registration-lists?

(Objected to by contestee's counsel.)

Answer. There were a good many; I do not remember the number, but I think there were some sixty-odd. I sat near the clerk of the election at this poll, and, at the request of all the managers or inspectors, I assisted the clerk of the election to look for the names of the voters on the registration-lists as they would come up to vote. As we would find the name of a voter presenting his vote on those lists, we would exclaim, "Found;" and if the name could not be found on the registry-lists, we would exclaim aloud, "Not found;" and for those names that could not be found on these lists the clerk would write opposite thereto on his poll-list in parenthesis, "Not registered." These parties whose names could not be found on the registry-lists, before they were allowed to vote, were required to take the oath found in section sixteen (16) of the election laws of the year A. D. 1868, with the addition thereto of the further oath that they had been registered voters previously thereto, but they did not swear that their names had been improperly struck off of the lists of registered voters—this I am confident of. Nearly all of these voters whose names were not on the registry-lists were colored men. There were some four white men who offered to vote at that poll whose names were not or could not be found on the registry-lists, and when these would offer to vote, the same oath was administered to them before they were allowed to vote that was administered to the colored men.

Cross-examination of Peter G. Snowden by contestee's counsel:

There was no form of oath at this precinct or poll No. three (3) in the hands of the inspectors, clerk, or managers of the election there, and when they found they had none, I went into an adjoining room and got the form of the oath that I thought was required by the laws to be administered to parties offering to vote whose names were not on the registry-lists, and told the managers what the oath was that I had thus found, and they used this oath all during the day. The inspectors of the election at that precinct were M. E. Papy, E. Lawrence Chestnut, and W. H. Battzell, and the clerk there was John B. Brooks. My politics are Democratic, and I voted at that election for J. J. Finley.

Redirect examination of P. G. Snowden:

Q. Were not the majority of the inspectors at that poll or precinct Republicans?

(Objected to by contestee's counsel.)

A. They were so considered.

The deposition of John B. Brooks, called by the contestee (page 124 of record):

JOHN B. BROOKS, of Gainesville, Alachua County, Florida, being duly sworn, deposes and says:

Question. What is your name and where do you reside?—Answer. John B. Brooks, and I reside in this place—Gainesville.

Q. Were you in Gainesville at the general election held there November 3, A. D. 1874?—A. I was.

Q. What position, if any, did you hold at that election?—A. I was clerk of election of precinct number three (3).

Q. Did the persons opposite whose names the words "not registered" were written on the poll-books take the ordinary oath before being permitted to vote?—A. They did.

Q. Do you recollect the substance of that oath?—A. I do not think I do exactly, but I think I could come pretty near it.

Q. Would you recognize the oath, were you to hear it read, that was administered to persons whose names were not found on the registration-list?

(Contestant objects to the question and to the reading of the oath.)

A. I think I would.

(Witness recognizes the oath contained in section (16) sixteen, act of 1868, or Bush's Digest, as the oath administered to electors whose names did not appear on the registration-list.)

Deposition of M. E. Papy, called by contestee (page 126):

Q. Were you in Gainesville at the general election held there on November 3, A. D. 1874?—A. I was.

Q. What position, if any, did you hold in that election?—A. I was inspector of election at precinct No. 3.

Q. Did or did not the persons who had the words "not registered" written opposite their names on the poll-list take the ordinary oath administered to electors whose names had been left off the registration-list before being permitted to vote?—A. I administered an oath to them. I do not know whether it was the proper oath or not, but presume it was. My intentions were to carry on a fair election.

Q. What was the substance of that oath?—A. I varied in the wording of the oath, but not in the substance. The general average of the oath was, "Are you twenty-one years of age? Do you live in Alachua County, State of Florida? Have you voted at any other precinct at this election?" That is about the substance of the oath that I administered.

It is clear by the election-laws of Florida that a person, in order to be entitled to vote at any election, must, six days prior thereto, be duly registered as a voter in the clerk's office of the circuit court in the county. If, on offering to vote, his name is not on the certified copy of the registry-list at the voting-precinct, he may then, if he takes the oath prescribed in section sixteen, and the additional oath required by section nine, which is "that his name has been improperly struck off from the list of registered voters," be entitled to vote. And the taking of the oath in section nine is indispensable to the right of the person to vote whose name is not upon the registration-list. The officers presiding at the election have no right to receive his vote without this oath. But it also appears by the evidence that, although the names of these sixty voters were not on the certified copy of the registration-list furnished for this poll, still a large number of the names were actually on the registration-list in the clerk's office of the circuit court. Your committee, in view of this fact, although the inspectors were in fault in allowing the persons to vote whose names were not on the list furnished them by the clerk of the circuit court, still, as their names should have appeared on such list, and they were deprived of the legal right to vote without taking the oath in section nine, by the neglect of the clerk of said court, in not providing a correct list of the voters of said precinct, have arrived at the conclusion that, they having voted, their votes should be counted when their names are found to have been on such registry-list at the clerk's office. This leaves the poll to be purged of twelve votes. "In purging the polls of illegal votes, the general rule is, that unless it is shown for which candidate they were cast, they are to be deducted from the whole vote of the election division, and not from the candidates having the highest number." "Of course, in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each." (Am. Law of Elec., sec. 298.) Although this is the rule to be applied where it cannot be ascertained for whom the illegal votes were cast, and in this case there is nothing to show that it might not have been ascertained for whom the illegal votes were cast, as the names of the unregistered voters could have been ascertained by comparing the poll-list and the registry-list, and the evidence of the illegal votes taken as to whom they voted for, and the poll purged in this the more regular mode; still, as this has not been done, your committee, unwilling to reject the entire poll, there being not evidence sufficient to prove actual fraud on the part of those having charge of the election, have determined to purge the poll of the twelve illegal votes by subtracting from each of the candidates a proportionate number of the illegal votes, according to the entire vote returned for each, which will give in this precinct (196) one hundred and ninety-six, in-

This is the only specific charge made as to this county. It is true that the twelfth ground of contest was doubtless aimed to embrace this as well as all other counties in the district. The twelfth ground of contest is as follows:

Twelfth. That illegal and undue influences were employed by United States and State officials or by persons representing themselves to be such, adherents of the Republican party, to prevent voters in this district from voting for me (the contestant), or inducing or intimidating voters into voting for you (the contestee), by threats of prosecution and otherwise, by the presence of detachments of United States troops at or near the polls, and by the illegal distribution of provisions donated by act of Congress to sufferers by the overflow of the Tombigbee and Alabama Rivers, in 1874.

There is no proof to sustain the specific allegation—

That more than 500 fraudulent and illegal votes were cast for the sitting member in Wilcox County, by persons not entitled to vote, and by persons voting more than once at said election.

The twelfth specification is too vague and uncertain to be good. The statute requires that the contestant, in his notice, "shall specify particularly the grounds upon which he relies in his contest." (Rev. Stat., pp. 17, 18, § 105; McCrary, § 343; Wright *vs.* Fuller, 1 Bartlett, 152.)

It is impossible to conceive of a specification of the grounds of contest broader or more general in its terms. It fixes no place where any act complained of occurred. It embraces the whole district in one sweeping charge. This specification embraces three general grounds of complaint, not one of which possesses that particularity essential to good pleading; but it can subserve no valuable purpose to pursue the question of legal sufficiency of this specification further, because there is another ground upon which the whole evidence of the contestant, relating to the election in this county, must be rejected. The sitting member served his answer to the notice of contest on the contestant on the 23d of December, 1874. The statute gives ninety days next after the service of the answer, in which to take the testimony. (See act of February, 1875.) This period is to be divided as follows: The contestant shall take testimony during the first forty days; the returned member during the succeeding forty days, and the contestant may take testimony in rebuttal only during the remaining ten days of said period. (Rev. Stat., p. 18, § 107.) During the first forty days the contestant took no testimony in Wilcox County or elsewhere to sustain any specification in his notice of contest affecting the election in said Wilcox County. His entire evidence was confined to the election held in other counties. During the succeeding forty days the returned member did not take any testimony in Wilcox County or elsewhere relating to the election held in said county of Wilcox; and yet, on the 15th and 16th days of March, 1875, the contestant caused notices to be served on the attorney of the returned member that on the 22d of March, 1875, he would take testimony in said county of Wilcox. Both notices specify that the witnesses therein named "will be examined in rebuttal of the testimony taken" by the returned member. Knowing that he had taken no testimony in relation to the election in Wilcox County at all, and hence that there was nothing to rebut, the returned member did not attend the taking of the testimony of contestant in said county. In violation of the statute, and contrary to the terms of the notices served upon the attorney of the sitting member, the contestant took a large number of *ex parte* depositions or affidavits for the purpose of proving the truth of the general charges embraced in the twelfth specification above quoted. The whole of the testimony taken in Wilcox County is directed exclusively to the proof of the contestant's original case, and

no portion of it is directed to the rebuttal of the proofs adduced by the returned member. The rules of law and the principles of common fairness alike require that the whole of contestant's testimony relating to the election in Wilcox County should be entirely rejected, first, because the time within which the contestant could lawfully take testimony to prove his original case had long previously expired; and, second, because the notices explicitly state that the witnesses were to be examined in rebuttal, and under such notices in the absence of the returned member it would be to give sanction to a surprise to allow any other than rebutting testimony to stand. And, in addition thereto, the contestee would have no right or opportunity to introduce evidence in answer to the original evidence thus taken during the ten days prescribed by law for taking of rebutting testimony.

The only remaining county in which the contestant took testimony to impeach the fairness of the election is Dallas. The particular charges in relation to this county are as follows:

Fourth. That 1,500 illegal and fraudulent votes were cast for the returned member by minors, by persons not qualified to vote at said election, and by persons voting more than once for the returned member at said election in the county of Dallas.

Fifth. That in said county of Dallas 1,000 illegal votes were cast for the returned member by persons who were not residents of said county, or entitled to vote at said election in said county.

Sixth. That in said county of Dallas 2,000 voters were prevented from voting for the contestant by intimidation and deception, and at said election voted for the returned member because of said intimidation and deception.

As to the fourth specification, after a very careful and minute examination of the testimony, the committee are convinced that it is not substantially proved. The testimony tends to show that there were twenty minors who voted in this county; but it is not clearly proven that even these persons were minors. The testimony offered to prove that they were minors was merely the opinions of bystanders who formed their conclusions from the appearance of the parties. They were, however, challenged and took an oath that they were twenty-one years of age. The committee believe that the proof is too vague and uncertain to justify them in striking off any vote as having been cast by a minor.

There is testimony tending to prove that nine colored men voted at the election who were not *bona fide* residents of the county of Dallas. The evidence shows that at some period before the election they had resided in adjoining counties. But these parties took, when challenged, the requisite oath of residence to entitle them to vote, and upon the proof it would be unsafe to hold that they were not legally entitled to vote as they did. The testimony fails to establish the fact that any person voted more than once at this election. The election seems to have been, on the whole, peaceably and fairly conducted.

The fifth specification is a mere repetition of a portion of the fourth, namely, that 1,000 votes were cast for the returned member by persons who were not residents of Dallas County, and not entitled to vote at the election held for member of Congress. Under the fourth specification we have said all that we deem necessary to dispose of so much of this charge as relates to illegal votes cast by non-residents, who were specifically and by name pointed out by the testimony. But there was a large body of testimony produced before the committee which tended in some degree to raise an inference that a large number of votes had been cast by non-residents of the county. This testimony is susceptible of being grouped into two general classes:

1. The testimony of a large number of witnesses showing quite a large emigration of colored people from this county since the year 1869.

election at said poll was not sworn as required by law; 2d. Because the officers of said election at the said Gordon precinct allowed and permitted a large number of votes to be cast at said precinct who were not legally entitled to vote, viz, about forty (40) votes, who were not registered, and who were not sworn as the law requires; 3d. Because the clerk of the election at said precinct was not sworn as the law requires; and, 4th. Because the ballot-box, poll-list, and certificate of said election at said poll did not correspond; and, 5th. Because no legal election was held at said precinct, and because of the reception at said poll of a large number of illegal votes, the said precinct giving you from said illegal poll a plurality of about twenty (20) votes, thus changing the result of the election at said poll.

All the allegations therein contained the contestee either denies or expresses ignorance of, and says that if the clerk was not sworn it is immaterial.

Your committee do not find any legal evidence to substantiate either of the allegations contained in the contestant's specification. The minutes of the board of canvassers for the county of Alachua are not evidence; neither are the reasons given by them for rejecting this precinct in their certificate. They are not of such official character as to make them evidence. The only evidence tending to show that unregistered voters were allowed to vote without being duly sworn is given by Cæsar Swett, a witness for the contestee, in his deposition (pp. 116 and 117), but his statements are not sufficiently clear, definite, and full to establish that fact. This poll must therefore stand as certified by the inspectors and clerk of the precinct, viz: 86 for Wall, 66 for Finley (page 142).

The contestant's sixth specification relating to Barnes's Store precinct is as follows:

That the said election at the precinct of "Barnes's Store," within the county of Alachua, and within the second Congressional district of Florida, was irregularly and illegally conducted, so that there was no valid and legal election held at said precinct; and I hereby give you notice that I will urge that all the votes cast at said poll be rejected, on the following grounds, viz: 1st. Because the clerk of said election-poll was not a registered voter of said State and county, and was not a citizen of the United States; 2d. Because the inspectors and clerk of said poll were not sworn, either before or after receiving any votes at said pretended election that they "will perform their duties respectively according to law, and will endeavor to prevent all fraud, deceit, or abuse in conducting the same," and for that said officers or pretended officers of said election-precinct at Barnes's Store, aforesaid, did not take and subscribe such oath as the law requires before receiving any votes at said election, and did not return such oath with the poll-list of said precinct to the clerk of the circuit court, as the law requires; 3d. Because there were gross irregularities, as shown by the returns of said poll, there being one hundred and ninety-four votes found in the ballot-box by county canvassers, and one hundred and eighty-one (181) votes on the poll-list, showing a discrepancy of thirteen (13) votes; while the number of votes, as appears from official certificate of result at said poll, was one hundred and ninety; 4th. Because you received one hundred and twenty-five (125) illegal votes cast at said precinct, and a plurality of sixty (60) illegal votes cast at said precinct.

To which the contestee answers as follows:

To this specification I reply that it is not true, as stated, that at the precinct of Barnes's Store, within the county of Alachua, and within the second Congressional district of Florida, the election was irregularly and illegally conducted, so that there was no valid and legal election held at said precinct. To the first paragraph of said specification I reply, I am informed and believe that the clerk of said election-poll was not a registered voter or citizen of the United States. To second paragraph of said specification, contestee enters a general and special denial to such allegation therein contained; neither are the allegations of gross irregularities, as set forth in the third paragraph of said specification, true, as your contestee stands ready to prove; neither is it true, as stated in the fourth paragraph of said specification, that I received one hundred and twenty-five illegal votes at said precinct, and a plurality of sixty illegal votes at said precinct.

There is not any legal evidence showing discrepancies as alleged by the contestant between the returns, poll-list, and ballots. W. H. Belton testified (page 66) that it appears from the minutes made and kept by the board of county canvassers at the time of canvassing the returns from this precinct, that such discrepancies existed, but, as stated above,

such minutes are not legal evidence. It is admitted that the clerk at this precinct was not a citizen of the United States. It also appears that the oath of the inspectors and clerk were not returned with the poll-list and the returns to the clerk of the circuit court. But the evidence shows that the inspector and clerk were duly sworn before entering upon their duties. There not appearing anything unfair in the mode of conducting the election by said officers, and no evidence that there was any fraudulent intent either with reference to the clerk or the failure to return the oaths, your committee, although such irregularities might, in connection with other circumstances tending to show fraud, compel the rejecting of the entire vote, do not think they ought to reject the returns from this poll, and they therefore decide that the returns from this precinct must stand as certified, viz, 125 for Wall, 65 for Finley.

The contestant's seventh specification is as follows:

That the said election at the Archer precinct, within the county of Alachua, and within the second Congressional district of Florida, was irregularly and illegally conducted, so that, as this contestant alleges, there was no valid and legal election held at said poll; and I hereby give you notice that I will urge that all the votes cast at said poll be rejected on the following grounds, viz: 1st. Because the inspector and clerk of said election-precinct were not properly and legally sworn as required by law; 2d. Because there were many illegal votes received at said poll, who were not registered and who were under age, and without taking the oath required by law to be administered by an officer of said election-precinct: 3d. Because at said poll one W. U. Saunders, one of your partisan friends, and partner in the practice of law, claiming to be a deputy United States marshal, under the guise of an assumed authority, illegally dictated to and overawed the inspectors at said poll, so that they did not and could not impartially discharge their duties as such officers at said poll; 4th. Because a large and excited crowd of your political friends, armed with clubs, &c., so surrounded said poll, and so boisterously and violently demeaned themselves, that a number of my supporters left the said poll without voting; 5th. Because said W. U. Saunders, a partisan friend to you, and partner in the practice of law, acting under the color of the authority of a deputy United States marshal, so intimidated and influenced the inspectors at said poll that they yielded the whole control and management of said election to him, supposing that he had the authority; and after said election was over the said Saunders, by his interference and directions, prevented said inspectors from counting the ballots as directed by law, but counted the same himself and sealed up the ballot-box himself without the solicitation of said inspectors; 6th. Because said ballot-box at said Archer precinct during the dinner-hour was shut up and closed from the public view for half an hour, contrary to the statute in such case made and provided; 7th. Because there were great discrepancies in the returns from said poll, no registration-list returned, &c., and because the polls were not open for at least one hour after the legal time, so that, as this contestant alleges and charges, a large number of illegal votes were received and counted for you from said Archer precinct; that is to say, about two hundred and ninety-three (293) illegal votes, and a majority of about one hundred and sixty-eight (168) votes.

To which the contestee answers as follows:

To your seventh specification I reply as follows: That it is not true, as stated in said specification, that at the said election at the Archer precinct, within the county of Alachua, and within the second Congressional district of Florida, the election was irregularly and illegally conducted; neither is it true, as set forth in the first paragraph of said specification, that the inspectors and clerks of said election-precincts were not properly and legally sworn, as contestee affirms and will prove; neither are the allegations contained in the second paragraph of said specification true. To the third, fourth, and fifth paragraphs of said specifications, contestee replies that the facts therein stated are not true, and a general as well as a specific denial is herein interposed to each and every allegation therein contained. To the sixth paragraph in said specification, contestee says that he knows of no discrepancies in the returns from said polls, neither does he know whether said poll was opened as alleged in said paragraph or not, and he emphatically denies that two hundred and ninety-three illegal votes were cast for him, and a majority of one hundred and sixty-eight votes. He also emphatically denies that any illegal votes were cast for him at said precinct.

It appears from the evidence of William H. Geiger, one of the inspectors, that about thirty-five voted at this precinct whose names were not on the registration-list. He testified as follows (page 54–55):

Q. Were there or were there not a good many persons who voted there on that day whose names could not be found by you on the registration-lists?

(Objected to by contestee's counsel.)

A. There was. I think I objected to about thirty-five voters voting at that precinct, on account of their names not being on the registration-lists, and about seventy in all, including the thirty-five mentioned already, on account of not being legal voters. All these persons referred to were allowed to vote, and did vote.

It appears that those whose names were not on the registration-list did not take the oath prescribed in section nine.

This appears from the evidence of Allen M. Jones, who testified as follows (page 115):

Q. Were or were not the electors, whose names did not appear upon the register, properly sworn before being allowed to vote?

(Objected to by contestant's counsel.)

A. Yes, they were. They were asked first how long they had lived in the State of Florida, and what were their names; how long they had been living in the county; if they had ever registered in the county, where and at what time; how old they were. The electors whose names were not found on the registration list at Archer precinct took the oath found in section sixteen, acts of 1868, or Bush's Digest.

Q. Did or did not said sworn electors swear, in addition to said oath, that they were registered voters, and that their names had been improperly stricken from the registration-list?—A. They swore that they were registered.

Such being the fact, the poll is to be purged of the thirty-five illegal votes upon the same principle before applied. It also appears that there was a discrepancy between the number of votes in the ballot-box and the poll-list. There were three or four more names on the poll-list than votes in the ballot-box.

Inspector W. H. Geiger testified thus (page 56):

Q. Did the number of votes in the ballot-box and the names on your clerk's lists correspond?

(Objected to by contestee's counsel.)

A. When the votes cast at that precinct were counted out, the number of votes in the ballot-box did not correspond with the number of names on the lists kept by the clerk of the election. When we found out this discrepancy, we did nothing with it at all, but sent the whole thing up just as it was. I do not remember whether there were a greater number of votes in the ballot-box than there were names on the clerk's lists, or whether the names on the clerk's lists exceed the votes in the ballot-box, but I think there were a larger number of names on the clerk's lists than there were votes in the ballot-box; and we did not put the votes back into the ballot-box and draw therefrom a sufficient number of votes to cure the excess.

Green E. Moore (page 58) says there were three or four more names on the poll-list than ballots in the box.

At this poll other and serious informalities are found to exist, such as a failure to swear the inspectors, the concealment of the ballot-box from public view during the adjournment for dinner, being about a half hour (Geiger, page 56), not opening of the poll until about half-past 9 o'clock, and the keeping it open after sunset. There was also an improper interference with the election by W. U. Saunders, United States marshal, both in meddling with the ballots and controlling the order of voting, so that several conservatives could not vote at all. These irregularities are grave ones, and might, with much reason, be adjudged sufficient to vitiate the poll; still, your committee are unwilling to reject an entire vote where there is not proof of actual fraud and the poll may probably be purged of its illegal votes. They have, therefore, allowed the returns to stand as certified by the inspectors, deducting only the thirty-five illegal votes proportionately from each candidate, which will leave the vote 260 for Walls and 23 for Finley, instead of 293 for Walls and 25 for Finley.

The eighth specification relates to Newnansville, and is as follows:

That the said election at the Newnansville precinct, within the county of Alachua, and within the second Congressional district of Florida, was irregularly and illegally conducted, so that, as this contestant alleges, there was no valid and legal election held at said poll; and I hereby give you notice that I will urge that all the votes cast at said precinct be re-

jected on the following grounds, viz: 1st. Because one of the inspectors who acted as such at said election at said poll, viz, Henry C. Parker, was not legally chosen, and was not sworn as the law prescribes an inspector of an election in the State of Florida should be; 2d. Because the key of the ballot-box at said poll during the election day was in the hands of one Joseph Valentine, a noted political friend and supporter of yours; said Valentine being neither an inspector nor clerk of said election at said poll, but claimed to be a United States deputy marshal, and having no authority to influence or control said election, except to preserve the peace, and was not the legal custodian of the key to said ballot-box. That during the adjournment for dinner said ballot-box was not sealed, as the law requires, but kept open; that a large number of illegal votes were received and counted at said poll, who were not registered as the law requires, and who were not legally sworn; that is to say, about one hundred and thirty (130) persons were allowed and permitted to vote at said election-poll whose names were not duly registered in said State and county; and because the canvass of the votes cast at said polls was proceeded with by the managers or inspectors of said poll before said poll was closed, and votes were received thereat pending said canvass; and because the ballots cast at said polls were not counted by the officers of said poll before proceeding to make up their returns, but were called off and reported without being counted at all; and because the ballot-box at said poll, and the returns of said precinct, together with the certificate of the results of said election-precinct, were not returned to the clerk of the circuit court, securely sealed, as the law prescribes, by the inspectors, or any of them, but unsealed, and by the aforesaid Joseph Valentine, who was neither an inspector nor clerk at said precinct. You are therefore hereby notified that I shall urge the rejection of all the votes cast at said precinct of Newnansville, within the county of Alachua, and within the second Congressional district of Florida, upon the above grounds, which, contestant alleges, renders the election there entirely illegal, null, and void; from which illegal precinct there were received and counted for you two hundred and fifty-one (251) illegal votes, and for me thirty (30) votes, giving you at said poll a majority of two hundred and twenty-one (221) votes, to which you were not entitled under the law.

To which the contestee answers as follows:

*Eighth specification.*—To your eighth specification I reply as follows: It is not true, as stated in said specification, that the said election at the Newnansville precinct, within the second Congressional district of Florida, was irregularly and illegally conducted, so that there was no legal and valid election at said poll, and all the allegations contained in said eighth specification are hereby denied in general, as well as specifically and in detail. In regard to Alachua County, contestee affirms, and stands ready to prove, that all the precincts, on the day of the election above referred to, were in the hands of the political and personal friends of the contestant, and that contestant's friends and contestee's enemies were inspectors and clerks at all said precincts in said county; that for all and any irregularities, illegalities, and frauds (if any should be discovered in said county), contestant, and not contestee, is responsible. Contestee believes and affirms that there was a conspiracy among contestant's friends in Alachua County to so conduct the election at the different polls or precincts in said county as that contestee would be defeated.

It appears from the evidence that 119 unregistered persons were allowed to vote at this precinct without taking the oath prescribed in section 9.

J. SAMUEL DUPUIS testified as follows (page 59):

Question. Did you act as supervisor of the election held there on that day?

(Objected to by contestee's counsel.)

Answer. I did, so far as I knew what the duties of a supervisor of an election were at the time, having been appointed as such supervisor.

A. There were quite a large number of persons who voted at that precinct whose names were not on the registration-lists. There were a hundred and twelve or a hundred and fifteen persons who voted at that precinct, whose names were not on the registration-lists. I know this because I kept a list of their names as they were sworn and voted, and I aided the inspectors of the election to inspect the registration-lists, and their names could not be found on those lists, and I assisted in the election, and administered the oaths to most of the challenged voters. I did this to facilitate the election. The oath contained in section (16) sixteen of the acts of the Florida legislature, of the year A. D. 1868, were administered to challenged voters. These challenged voters did not swear that their names had been improperly stricken from the registration-lists, but they swore that they had been registered voters.

Cross-examination of J. S. DUPUIS, by contestee's counsel:

A. I did not insist on the managers having the ballot-box sealed, or say anything to them about it, as I thought that that was their business and not mine.

Q. Were you not satisfied that a majority of the one hundred and twelve or one hundred and fifteen whose names were not on the registry-lists, but who voted at that precinct, were legal voters or legally entitled to vote, and had been properly registered in this State and

county, and that their names had been intentionally, or otherwise, left off of the registry-lists which were used at the Newnansville precinct?

(Objected to by contestant's counsel.)

A. I believe that the greater number of the one hundred and twelve or one hundred and fifteen who voted, but whose names were not on the registry-lists, were registered voters, or had registered at some time previous, but how their names came to be absent from the registry-lists I do not know and cannot tell. The following is a list of the names of those voters who were challenged, but whose names were not on the registry-lists used there at that precinct, which lists were printed, and a few names written thereon, to wit: Henry Woodward, Abram Brown, Harrison Adams, Joseph Johnson, Geo. Pray, David Jones, Daniel Williams, Andrew J. Brown, John Fields, J. H. Revere, Saml. Hathcock, S. Blake, Bob Wilson, Taylor Drew, Harry Hall, Jackson Fowler, Isaac Hays, Aaron Dean, Chesser Mahoney, William Washington, Alex. Barbey, Willis Reynolds, Jack Banks, July Gaines, Jefferson Brooks, Dan. Clark, Jack Bosby, Henry Mahoney, William Brookington, John Harris, Geo. Sheppard, Isaac Brookington, James Gaines, N. Gaines, Barney Belcher, Pressley Harris, Raphael Ferguson, Eloni Ferguson, Nelson Riley, George Doby, Manuel Doby, James Madison, Charles Gee, Abe Clifton, John Stephens, Taylor Johnson, Ned Dorsey, Amos Johnson, Henry Cooper, Jones Evans, Richard Cook, Jerry McCaslin, Balidal Small, Bristor Blue, Robt. Boulware, Richard Yates, Hector Mangum, Chester Fields, Amos Graham, Bill Williamson, George Sharpe, Ben. Thompson, Charles Holland, Lee Lyons, Daniel Mahoney, Seth Brown, Ransom McDaniel, Reuben Buscam, Peter Jackson, William Mott, Crejo Howell, Eli McRae, Saml. Kerr, Washington Clark, George Pelason, Toby Welch, Albert Harkley, Steve Harris, Preston Welch, Richard Hall, Geo. Amos, Newton Harris, David Walker, George Lumpkin, Bassie Terry, Stephen Smallwood, Jacob Stanley, Joe Harris, George Hughes, Emprey Danton, Lowden Tucker, Abe Brown, James Boyd, Isaac Bernan, Cain King, Randal Stanley, Harry Amos, Wm McLean, Joseph Bradley, Chas. Adams, Ben. Nelson, Smart Sholler, Thomas Day, W. H. Green, J. B. Haggins, Homer Cato, Samuel Payne, J. G. Sparkman, Saady (idiot), John Richardson, Ivy Brewer, Calvin Sewell, Ivey Cooper, Willis Vaughn, Vance Maury, James Brown, John Low, J. M. Farmer, C. F. Parker.

Henry C. Parker, who acted as an inspector at this precinct, testified as follows (page 73):

Q. Do you know whether or not a number of persons voted there at that precinct at that election whose names were not or could not be found on the registration-lists of the county of Alachua?

(Objected to by contestee's counsel.)

A. There were a good many who voted there whose names could not be found on the registration-lists. I do not now remember the number of them. Gideon Sparkman and C. F. Parker were two white men whose names I can remember who voted there whose names were not on the registry-lists. I administered the oath to both of them before they were allowed to vote. One of them said that he was a registered voter of Bradford County, and claimed the right to vote for member of Congress, and did vote. The white men there at that precinct voted for—at least it is my impression and opinion that they voted for—General J. J. Finley; and it is equally my opinion that the colored men voted there generally for General J. T. Walls. The voters who voted there at that precinct whose names could not be found on the registration-lists of the county took the oath that is prescribed in section sixteen (16) of the election laws of the State of Florida of the year A. D. 1868, and no other oath. They did not swear that their names had been improperly struck from off the registry-lists of the county.

M. N. Lewrey, clerk, was called by the contestee, and testified thus (page 120):

Q. What oath was administered to the electors whose names were not found on the registration-list?—A. The substance of the oath runs about like this: Are you twenty-one years of age? Are you a citizen of the United States, and of the State of Florida? Are you entitled to vote at this general or Congressional election by previous registration? Are you disqualified by the judgment of any court? The oath set out in section sixteen (16) of the act of 1868 was the oath administered to non-registered voters, and in addition they swore that they were previously registered.

There were several other irregularities at this poll, viz: Henry C. Parker, who acted as inspector, was not sworn; the ballot-box was left unsealed during the adjournment for dinner; the count of the ballots was irregular. Testimony of Henry C. Parker (page 73):

Q. Before you commenced acting as inspector of that election at that precinct, did you take the oath required by law to be administered to inspectors before they proceed to act as such?

(Objected to by contestee's counsel.)

A. No, sir; I did not take any oath at all. The ballot-box at that precinct during the adjournment for dinner was left in charge of some of the inspectors and managers, and was left with them unsealed, and was so during the adjournment; that is, the hole through which the ballots were inserted was not sealed up or closed. I do not know where the key to the ballot-box at that precinct was during the adjournment there for dinner or during the whole day; but toward night, about the time of the close of the polls, the key was called for, and was produced by Joseph Valentine. This key was called for at the time we commenced to count the votes cast at that poll, which was a little while before the close of the polls. We—that is, the inspectors—did not count the number of ballots that were in the ballot-box as they were taken out of the box. They were only counted by and from the tally-lists that were kept by the clerk and Mr. J. S. Dupuis, as the votes or ballots were called off.

The key of the ballot-box was left with Joseph W. Valentine, who was neither clerk nor inspector at the election, but a partisan friend of the contestee. (See testimony of Parker above and deposition of Valentine (page 127). The ballot-box was not returned to the clerk of the circuit court of the county sealed, as required by law, by one of the inspectors or the clerk (Bush's Digest, p. 303), but was returned by said Valentine, unsealed, as appears by deposition of E. C. F. Sanchez (p. 166), who testifies as follows:

Q. Do you know Joseph W. Valentine, who has testified in behalf of the contestee in this cause?

(Objected to because the question is leading.)

A. I do know Joseph W. Valentine.

Q. Do you know whether or not Joseph W. Valentine, from his general reputation, is a warm friend of the contestee, Josiah F. Walls, and whether or not he is a strong political partisan in favor of the contestee?

(Objected to by contestee's counsel.)

A. Joseph W. Valentine by reputation is a Republican in politics, and, from expressions made by him in my presence, he is a friend of General Walls.

Q. Is he a colored or a white man?

(Objected to by contestee's counsel, because it is irrelevant and not in strict rebuttal of contestee's testimony.)

A. He is a colored man.

Q. After the election held November 3, 1874, did you or did you not see this same Joseph Valentine with one of the ballot-boxes of some precinct in Alachua County; and, if so, where did you see him, what ballot-box did he have, and under what circumstances did he have it?

(Objected to by contestee's counsel, on the ground that it brings out new matter, of which the contestee had no notice, tending to create surprise, and which he has no opportunity of disproving.)

A. I saw this same Joseph Valentine the day after the election. He had at the time that I saw him a ballot-box of election-returns from the precinct of Newnansville. He came to the court-house in Gainesville with this ballot-box; the clerk's office was closed, and he walked into my office and put the ballot-box on the floor. The ballot-box at that time was unsealed.

Q. At the time he put this ballot-box on the floor in your office did he not have it in an exposed condition, or did he keep it under strict scrutiny?

(Objected to by contestee's counsel, on the ground that it is a leading question, and because it is new matter, and not in strict rebuttal of contestee's testimony.)

A. I would say that, for a ballot-box, it was left in a very exposed condition. He left it and went out into the streets and was gone for a considerable time. My office is a very public place. I was walking in and out from time to time, and did not pay a great deal of attention to it.

Your committee regard these irregularities of such a character as to throw great discredit upon the election at this precinct, but they have not come to the conclusion that by reason thereof the entire vote must be rejected, and while not in any manner wishing to appear to sanction or excuse such irregularities and direct violations of statutory provisions made to secure a fair election, they have determined in favor of purging the poll by the rule adopted in the Gainesville precinct No. 3, and have subtracted the one hundred and nineteen illegal votes proportionately from each candidate, which will leave the vote as follows: 146 for Walls, instead of 251, and 16 for Finley, instead of 30, as returned by the inspectors.

The contestant's ninth specification, relating to Colored Academy precinct, Columbia County, is as follows:

That the said election at the Colored Academy precinct, within the county of Columbia, and within the second Congressional district of Florida, was irregularly, illegally, and fraudulently conducted, thereby rendering the election at said precinct null and void; and I hereby give you notice that I shall claim and urge that all the votes cast at said precinct be rejected, upon the following grounds: Because the majority of the persons who acted as inspectors at said precinct were not the persons who had been duly appointed to act as such inspectors at said precinct, but unlawfully and fraudulently assumed to act as such inspectors at said precinct, and opened the polls at said precinct at a very early period of the day, and more than one hour before the time prescribed by law, and before the regularly-appointed inspectors of said precinct had time to reach the place of voting, and before they were required by law to be present and open said poll, and that a large number of votes were polled at said precinct before the legal hour of opening the polls. That there was a large number of illegal votes received at said poll, whose names did not appear on the registration-list, and to whom the oath prescribed by law was not administered. That a large number of illegal votes were received at said poll of persons convicted of crimes and felonies, and disfranchised by the laws of Florida, and of persons under the age of twenty-one years, and of persons who were not residents of said county of Columbia. That the illegal conduct of said inspectors at said polls was such as clearly to indicate a fraudulent purpose, and to defeat the legal and fair result of said election, and did change the result of said election; and so this contestant alleges and charges that said election at said Colored Academy precinct, within the county of Columbia, and within the said second Congressional district of Florida, was illegal, fraudulent, and void, and that a large number of votes were received thereat for you to which you are not legally entitled, and which should be rejected.

The contestee replies to this as follows:

To your ninth specification I reply as follows: It is not true, as stated, that at said election at the Colored Academy precinct, within the county of Columbia, and within the second Congressional district of Florida, the election was irregularly, illegally, and fraudulently conducted, thereby rendering the election at said precinct null and void. Contestee further says, in regard to said specification, that he denies the charge in said specification that a majority of the inspectors at said precinct were not properly and legally appointed, and that the poll at the said precinct was opened one hour or more before the time prescribed by law, and before the regularly-appointed inspectors had time to reach the place of voting, and before they were required by law to be present and open said poll, and that a large number of votes were polled at said precinct before the legal hour of opening the poll. Contestee also denies the allegation in said specification that a large number of illegal votes were received at said poll, as set forth in said specification, and contestee will object to any testimony being received in regard to said charge of illegal voting, because said charge is too indefinite, vague, and uncertain. Contestant should have furnished the names of all such persons whom he accuses of illegal voting, in order that contestee might be prepared to prove the falsity of said charge. Contestee also denies the charge in said specification that a large number of illegal votes were received at said poll of persons convicted of felonies and disfranchised by the laws of Florida, and of persons under the age of twenty-one years, and of persons who were not residents of said county of Columbia. Contestee will also object to any testimony being received concerning said charge upon the ground already just specified; contestant should have furnished the names of all such persons for the reasons already set forth. Contestee further denies the allegation concerning the illegal conduct of the inspectors at said poll, but asserts and stands ready to prove that the election at said Colored Academy precinct was in all respects honorably, fairly, and legally conducted, and in full accordance with the laws of the State of Florida, and he emphatically denies that any votes were polled for him at said precinct to which contestee was not legally entitled.

At this precinct your committee find that there was a conspiracy to commit a fraud upon the election. That the conspirators were Dr. E. G. Johnson, who was a candidate for State senator in Columbia County, and was voted for at this precinct, together with Charles R. King and John W. Tompkins, who acted as inspectors, Charles A. Carroll, who acted as clerk, and one Duval Selph, a supporter of Dr. Johnson. Carroll and Selph were at Dr. Johnson's during the night previous to the election, and King took breakfast with him in the morning. They all, except Selph, left the house of Dr. Johnson in the morning a little after daylight, and proceeded to the place were the election was to be held, and, in pursuance of the object of the conspiracy, opened the polls at about seven o'clock in the morning, an hour before the time at which

the meeting was notified, and an hour before the duly-appointed inspectors were called upon to be present, and an hour before the election could be held according to law. No one of the duly-appointed inspectors, unless it was Aleck Hamilton, was present or acted at this precinct. Tompkins and King had been requested to be present by Dr. Johnson and act as inspectors, and Charles A. Carroll had been requested by him to act as clerk, and these several persons were either nominated by, or acted at the request of Dr. Johnson. They were not legally elected, as there was no regular meeting of the electors having power to choose inspectors before Tompkins and King undertook to act as such, and without legally appointed or chosen inspectors no legal clerk could be chosen or appointed, so that the election at this precinct was conducted by persons not legally authorized, with the exception of Hamilton, and by persons who were ready and willing to violate the election laws of the State, and who did violate them.

The fact that the poll was open at 7 o'clock is established by deposition of Duval Selph (page 86):

I was at the Colored Academy precinct when the polls were opened. They were opened at about three minutes after 8 o'clock by my watch. I guess my watch was a little fast. I ran my watch up from the usual time one hour and twenty minutes. I believe I did this on the morning of the election. I saw Dr. Johnson in the afternoon before the election, and also after tea; had conversations with him in reference to the question.

Q. From these conversations, and from the apparent interest he took in the election, was it not apparent that his object was to have this poll at the Colored Academy precinct opened before the legal hour?

(Objected to by contestee's counsel.)

A. I think he desired to get to voting as early as possible; I think so from his asking me to run up the watch. His calculation was that we would have to vote about three men to the minute, at least, so he stated to me. This was one of the reasons why he wished the polls opened early, as I suppose.

Q. Do you think one of his reasons for having the polls opened early was that he might have an opportunity to get votes polled before there was any one present to object?

(Objected to by contestee's counsel.)

A. I suppose it was.

John V. Brown (page 78):

I was present at the Colored Academy precinct, in Lake City, Columbia County, Florida, in the second Congressional djctrict, on the 3d of November last, at the general election. I was acting as a challenger for the Conservative party. I was there about 7 a. m.; it could not possibly be ten minutes after 7. When I got there the house was closed. I looked through the window and saw the managers, and I asked for admission, and they let me in. John W. Tompkins, Chas. R. King, John A. Carroll, and Francis Carolina, and George G. Keen (magistrate), and four or five others whose names I do not now remember were in the room where the ballot-box was; Dr. E. G. Johnson was in the next room, issuing paper of a green color, which I took to be tickets, to the colored people. There was a partition between the rooms. They were voting in there when I arrived. John W. Tompkins and Charles R. King, and a colored man named Hamilton, were acting as inspectors, and John A. Carroll as clerk.

Francis M. Weeks (pages 82, 83):

I was at the Colored Academy precinct, in Lake City, Columbia County, Florida, in the second Congressional district, on the morning of the 3d day of November, A. D. 1874. I got there about 7 o'clock a. m. When I arrived there I went to the clerk's desk, and found about twenty persons had already voted, as appeared from the lists.

Charles A. Carroll, clerk (page 80):

Q. Was there anything said about opening the polls earlier than 8 o'clock?—A. The object was to open the polls as early as possible, so as to let them all vote. Johnson, I think, was estimating how many must vote in a minute to get through that day. It was a little after daylight when I got to the polls in the morning; I went there with Dr. Johnson; they did not commence voting as soon as I got there, but went at once to make arrangements for voting, by removing benches, &c.

Wm. I. Bennett (page 76):

The election was held on the 3d day of November, A. D. 1874. I was in Lake City, i Columbia County, Florida, in the second Congressional district, on that day, and at thn

Colored Academy precinct the greater part of the day. I was there as a challenger. I reached the polls about 8 o'clock; when about three hundred yards from the polls I looked at my watch, which was set the day before to railroad time, and found it wanted five minutes to 8 o'clock a. m., and I went immediately to the polls, walking fast, directly, and in haste. The polls were open when I arrived there, and they were voting.

John W. Tompkins (page 84):

Cross:

We were at the polls some time before we opened them, and arrived at an early hour. It was insisted by several persons present that it was time to open the polls, but having considerable fixing to do——

Q. Why were not the polls opened?—A. Before it was possible to begin the election it was necessary to open a panel through a door before we could receive the ballots. This took twenty or thirty minutes, as it took some time to send for a saw to open the aperture. The door was broken by doing it. In addition to this we had to arrange the table for the inspectors and clerk. It was quite a cloudy morning; it was impossible to tell without a watch when the sun did rise. It occurred to me it was not eight o'clock. Mr. Carolina, being present with a watch, stated that it was twenty or twenty-five minutes past seven o'clock. By Mr. Duval Selph's watch it was two minutes past eight o'clock; by Armstrong's watch it was three or four minutes past eight o'clock. Armstrong stated that he was just from a watchmaker's (Mr. Ross's) shop, and that he had the watchmaker's time. Consenting to be governed by the majority of the watches present, we opened the polls.

Direct:

Mr. Armstrong was a preacher, and a Republican candidate for State assembly, a colored man.

The inspectors permitted a large number of persons not registered to vote without taking the oath required by section nine. This appears by the evidence of W. I. Bennett, who testified thus (page 77):

Q. Were there any votes cast at that precinct when the names were not on the registration-list?

(Objected to by counsel for contestee.)

A. A great many. I am satisfied there were seventy-five, and probably a hundred voted, whose names were not on the registration-list, who only took the following oath: "You do solemnly swear that you are twenty-one years of age; that you are a citizen of the United States (or, that you have declared your intention to become a citizen of the United States, according to the acts of Congress on the subject of naturalization); that you have resided in this State one year, and in this county six months next preceding this election; that you have not voted at this election, and that you are not disqualified to vote by the judgment of any court." No other oath was taken by those who voted, and whose names were not on the registration-list. None of the above took the oath that they had been registered and their names had been improperly stricken from the registration-list.

Cross:

Q. You stated that there were seventy-five, perhaps one hundred, voted whose names were not on the registration-list; will you state on what grounds you make that statement?—A. From the number who voted whose names were not on the registration-list. When a man came up to vote, his name was looked for, and if not found the inspectors administered the oath. It is my impression the number is as large as seventy-five; not less.

Q. Do you mean to be understood that each and every one of the persons who voted, whose names were not on the registration-list, and included in the seventy-five or a hundred referred to, took the oath above referred to and no other?—A. I do.

John W. Tompkins (page 84):

Cross:

Q. When their names, who offered to vote, could not be found on the registration-list, did you and the other inspectors require them to declare, on oath, that his or their names had been improperly struck off from the list of registered voters?

(Objected to by contestant's counsel.)

A. We had two oaths, and Captain King almost invariably administered the oath, and in every instance, as well as I remember, we administered the oath. I recollect occasionally they swore their names had been improperly struck from the rolls. The oath, section sixteen, act 1868, page 5, was the one generally administered in almost every case. There were only a few took the oath that their names were improperly stricken from the list.

Sixteen persons voted, both at the Market-house precinct, in this county, and at Colored Academy precinct, as appears from the evidence

of Keightley S. Waldron, clerk of the circuit court of Columbia County (page 82):

Q. Did you examine the election-returns after the election of the Colored Academy precinct and the Market-house precinct, to see whether there had been any double or illegal voting?

(Objected to by counsel for contestee.)

A. I examined the copies of the registration-lists as returned from those precincts. I compared the registration-lists of the two precincts.

Q. State if, upon this examination and comparison, you found a number of names who had voted at both precincts.

(Objected to by counsel for contestee.)

A. I did. In the examination of the lists, I found sixteen names which had been voted at both precincts. Before I had finished the examination I was called on business in the office. I then went into the country, and when I returned the office had been destroyed by fire. I did not complete the examination. The copies of the registration-lists were certified copies of the original, and were alike at all the precincts.

One Huison Yates voted twice, once for the contestee, and the second time he voted a green ticket ("the Republican color that day," page 78).

One Jim Jones, not twenty-one years of age, voted (Brown, pages 79, 80).

Your committee are satisfied that the irregularities at this precinct were not the result of ignorance, inadvertence, or carelessness, but were the result of fraud, and that there were no legally-appointed inspectors nor a legally-appointed clerk at this precinct; that Johnson took the entire charge of the polls through persons who by his procurement acted as inspectors and clerk. They cannot stand better than mere intruders, having no official character; intruders not for the purpose of aiding in conducting an election fairly, but for the purpose of carrying into execution a previously-arranged fraud upon the ballot-box. It is clear that the pretended clerk, Charles A. Carroll, arranged with Dr. Johnson to commit a gross fraud at this election, and although he did not do the particular acts it was arranged he should do, still the evidence is clear that Dr. Johnson himself carried out the fraud planned with the clerk, of putting illegal votes into the ballot-box with the knowledge of the clerk. The evidence of fraud is found in the depositions of several witnesses.

John A. Carroll testified (page 80):

Was present at the Colored Academy precinct in Lake City, Fla., in the second Congressional district, on the 3d day of November, A. D. 1874, at the general election; I acted as clerk on that day. Dr. Johnson (E. G.) asked me to serve. I came up the day before the election at Dr. Johnson's request. I saw Dr. Johnson the day before the election. I saw Dr. Johnson several times during the day after I came in; I saw him at night again at his house. There was an appointed time for us to meet at Dr. Johnson's house; when I first went there, at eight o'clock, when Mr. Selph was there, I don't think Dr. Johnson was in the room; I suppose he was busy in the matter of the election. After Mr. Selph went away and he, Johnson, had quieted his company, Dr. Johnson came in and brought a book, which I took to be a copy of the registration-book.

Question. State all that occurred between you and Dr. Johnson.

(Objected to by counsel for contestee.)

Answer. I took down fifty names, more or less, at Dr. Johnson's request, from the book Dr. Johnson took from the shelf. Dr. Johnson called off the names and I took them down. I had consented to act as clerk before Dr. Johnson gave me these names.

Q. What was the impression on your mind that Dr. Johnson desired you to do with those names?

(Objected to by counsel for contestee.)

A. The impression created at the time was that he wanted the names worked in to secure his election.

Q. Was there anything said about opening the polls earlier than eight o'clock?—A. The object was to open the polls as early as possible, so as to let them all vote. Johnson, I think, was estimating how many must vote in a minute to get through in that day. It was a little after daylight when I got to the polls in the morning; I went there with Dr. Johnson; they did not commence voting as soon as I got there, but went at once to make ar-

rangements for voting, by removing benches, &c. Mr. Cleaveland told me he could not serve that day.

Q. Was there anything said about King, Selph, or anybody else acting as inspectors?

(Objected to by counsel for contestee.)

A. There was something said relating to King's getting back; King was wanted here by Johnson; he came and acted as inspector; myself, Dr. Johnson, Charles R. King, and John W. Tompkins started in company to the polls from Dr. Johnson's house.

Q. Was there anything said by Dr. Johnson, or any proposition made in your hearing, that a party should go and intercept the returns from the Ellisville precinct?

(Objected to by counsel for contestee. Question withdrawn.)

Q. Was there anything said by Johnson or any one else at that interview or any other with regard to voters coming up by the railroad?

(Objected to by counsel for contestee.)

A. After I lay down, there was a man came and knocked at the door at a late hour; I asked his name, and he told me it was Aleck Johns; I went with Johns part of the way to Dr. Johnson's door; he and Johns were talking on business, and I heard something said about some one coming up from Jacksonville; Johnson did not tell me who was coming up or what they were coming for; I was not near enough to hear distinctly, as the conversation was in whispers. Johns was a colored man; Dr. Johnson told me that the book I spoke of above was a copy of the registration-book.

Cross:

I do not recollect that Johnson asked me to work the names in; I don't remember; I suppose he thought I had sense enough to know what to do or he would not have wanted me as clerk.

Q. What did you do with the fifty names?—A. I tore them in pieces and put them in my boot-leg, and afterward gave them to Wm. P. Roberts; they were not used at all on the day of election; there were some half-dozen tally-sheets, perhaps a dozen. I think there were the same number of names on the sheet I tore up as on the other tally-sheets. Johnson told me the day before he wanted me to act as clerk. Before the polls were open George G. Keen was called or sent for and swore us in; four of us were sworn in; I was sworn separately; the rest, I think, together.

Q. Did Johnson tell you about his wanting King as inspector?—A. Do not recollect. I was present all the time the voting was going on.

Q. As far as your observation extended, was it a fair and legal election?—A. I was only a clerk, and not acquainted with the people. As far as I know, it seemed to be a fair election. There were a great many challenges made by Mr. Barnett and Brown, especially by Mr. Barnett.

Redirect:

I destroyed the list I wrote at Johnson's prompting after the election commenced. Johnson did not know till after I had torn it up. He knew before the election was over. I told him before the election was over.

Recross:

Johnson made no objection when I told him there was no use for it; it was too late to make any. He did not act as if he cared anything about it.

## John W. Tompkins (page 83):

I was at the Colored Academy precinct in Lake City, Columbia County, Florida, in the second Congressional district, on the 3d day of November last, and served as one of the inspectors of election there. I was nominated as inspector by Doctor Johnson. Doctor Johnson asked me the night before the election to act either as clerk or inspector. Mr. Cleaveland was the regularly-appointed inspector. Doctor Johnson told me that Mr. Cleaveland had declined to act, and that Mr. Cleaveland had suggested to him (Johnson) to get me. I was a supporter of Doctor Johnson at the election.

Question. Did Johnson say anything at that time to you about Charles R. King being requested to act in some official capacity at the Colored Academy precinct?

(Objected to by contestee's counsel.)

Answer. During the conversation I asked Johnson who he expected to have as inspectors. He said it was probable he would have Charles R. King; but as he was in Live Oak, he did not know whether he would be down or not. Johnson said it was likely there was another of the inspectors, whose name I do not recollect, would not act, and that was the reason he wanted Captain King. I slept or staid at Doctor Johnson's the night before the election. Mr. Carroll and Mr. Selph were at Doctor Johnson's when I went there. Mr. Carroll remained all night and slept with me. Captain King was not there that night. I expect we were all political supporters of Doctor Johnson's. I cannot speak positively except as to myself. King came to Johnson's to breakfast next morning. He was sent for to Holt's office by Doctor Johnson to see if he had come on the train, and if he was there to come to breakfast at Johnson's. King acted as inspector.

Duval Selph (page 85):

I was at the Colored Academy precinct, in Lake City, Columbia County, Florida, in the second Congressional district, a good part of the day on the 3d day of November, 1874, the day of the general election. I know Dr. E. G. Johnson; he was a candidate for the State senate. He was the Republican candidate.

Question. Did you hear Dr. Johnson speak with reference to men voting both at the Market-house and the Colored Academy precinct; and, if so, what did he say?

(Objected to by contestee's counsel.)

Answer. Heard him say that he did not think they would notice the voting at the Market and at the Colored precinct.

Q. Did you hear Dr. Johnson speak of voters being brought from other counties; and, if so, how many?

(Objected to by contestee's counsel.)

A. I did; fifty-two in number. He said they were brought at his expense. I think he told me it cost him either three hundred and twenty-five or three hundred and seventy-five dollars. This conversation was after the election.

Q. Did you not have some conversations with him on the same subject before the election?

(Objected to by contestee's counsel.)

A. He said at one time before the election that it might be difficult to get them. He said in Duval County there were two Republican candidates running, and they might try to keep them in that county.

Q. Was there any conversation about getting men from other counties who had been registered in this county, and whose names had not been stricken from the registration-list?

(Objected to by contestee's counsel.)

A. He claimed that their names were on the registration-list.

Q. When Johnson remarked that he did not think they would notice the voting at the Market-house and at the Colored precinct, was the impression on your mind that he alluded to those who voted at both precincts?

(Objected to by contestee's counsel.)

A. Such was my impression. I was at the Colored Academy precinct when the polls were opened. They were opened at about three minutes after eight o'clock by my watch. I guess my watch was a little fast. I ran my watch up from the usual time one hour and twenty minutes. I believe I did this on the morning of the election. I saw Dr. Johnson in the afternoon before the election, and also after tea; had conversations with him in reference to the election.

Q. From these conversations, and from the apparent interest he took in the election, was it not apparent that his object was to have this poll at the Colored Academy precinct opened before the legal hour?

(Objected to by contestee's counsel.)

A. I think he desired to get to voting as early as possible; I think so from his asking me to run up the watch. His calculation was that we would have to vote about three men to the minute; at least, so he stated to me. This was one of the reasons why he wished the polls opened early, as I suppose.

Q. Do you think one of his reasons for having the polls opened early was that he might have an opportunity to get votes polled before there was any one present to object?

(Objected to by contestee's counsel.)

A. I suppose it was.

Q. Did you have any conversation with Dr. Johnson with reference as to who were to act as inspectors at that precinct?

(Objected to by contestee's counsel.)

A. I did. He said he expected Johnny Tompkins, and Charles R. King, and a colored man, whose name I have forgot. These persons did act.

Q. Did you understand the fifty-two voters expected by Dr. Johnson from other counties were colored men?

(Objected to by contestee's counsel.)

A. I did.

Q. Did you have a conversation with Dr. Johnson after the Market-house precinct had been heard from as to what he thought of the result of his election?

(Objected to by contestee's counsel.)

A. About four o'clock in the afternoon, I think—it might have been later—some person stated to Dr. Johnson about the number that had been polled at the Market-house; he then remarked if there was not something done he was defeated. He then asked some person present—I do not recollect who; there were several present—if they could not fix up a trick and capture the Ellisville precinct returns as they were bringing them to Lake City. The Ellisville precinct is regarded as a conservative precinct.

Cross:

Q. Was not Dr. E. G. Johnson murdered since the election?

(Objected to by contestant's counsel.)

A. I don't know.
Q. What is your impression?
(Objected to by contestant's counsel.)
A I heard so.
Q. Have you any doubt about it?
(Objected to by contestant's counsel.)
A. I believe he was killed. My relations with Dr. Johnson at the time of these conversations were confidential and very friendly. I was in frequent conference with him with regard to the election; I advised with him very frequently. I very frequently made suggestions to him with regard to the election. I do not know that I had not his confidence more than some others. I was desirous he should be elected. Our intention was to elect him. I do not recollect suggesting to him to bring back persons who were registered, who were absent from the county, to vote at the election: he spoke of doing it. I understood that the fifty-two voters were or had been registered voters of this county. The conversation with regard to parties voting both at the Market-house and the Colored Academy took place about 10 o'clock p. m. of the day of election. Johnson had not told me that parties had voted at both precincts before this conversation, nor at any other time. I have already stated what he said. Johnson did not pay me anything for running my watch ahead; I did it on my own free will. I was active in electioneering for Johnson. The election was conducted quietly, but I do not think fairly. I did not assist in conducting it; I went round and distributed tickets. There were several white men who, I think, voted for Johnson at that precinct. I was neither clerk nor inspector.

Q. Did you do anything unfair yourself at the election?—A. To my knowledge I did not. The reason I think the election was conducted unfairly is, that from seventy-five to a hundred persons received tickets from Johnson. He called a name and a number, and they put it through an aperture in the wall where the ballot-box stood, and called out the name and number, and the ballot was thus received; this is one of my reasons. Johnson called the name and gave the number which he gave to these parties from what he told me was a copy of the registration-list, and the parties took the number with the ticket and passed it through the hole to the inspectors, calling out the name. The returns from the Ellisville precinct were not intercepted.

Redirect:

Q. State other reasons why you consider the election unfair.—A. My other reason is that the number of men who voted through the window by number, as above stated, were (as I believe) voting under fictitious names; no one told me so.

Thomas M. Mickler (page 85):

I know John W. Tompkins.

Question. Since the election, on the 3d day of November last, did you have a conversation with John W. Tompkins in reference to the Colored Academy precinct, as to whether the votes all tallied there or not?

(Objected to by contestee's counsel.)

Answer. On the evening of the election, after the polls were closed, he (Tompkins) remarked to me that the votes did not tally at the Colored Academy precinct by thirty or forty. I asked him how they managed it. He said there was always a wheel within a wheel. I understood he was one of the inspectors at the Colored Academy precinct.

Cross:

The conversation commenced in this way: I remarked to Tompkins that I never saw an election more fairly conducted than it was at the precinct where I was (the Market house), and that the votes (twice counted) came out even both times. He then made the remark above stated. I mean by the votes tallying that they were the same in number with the names on the clerk's list. I took the conversation jestingly, and I thought he had a little too much liquor aboard at the time.

The facts stated by these witnesses are uncontradicted and unexplained. Tompkins and Carroll were acting as officers of the election, and if it can be said their testimony is not entitled to the fullest credit it must also be said that their acts as officers are unreliable. Their conduct, instead of rendering it probable that their return is correct, makes it certain that fraud was practiced at the polls. The fraudulent intent of Johnson is clearly proved; the willingness of the officers to aid him in carrying into effect his fraudulent purpose is manifest; and it is also clear from all the facts that fraud was committed, which was facilitated and aided by the officers of the election.

The law is that where fraud is proved to have been committed by the officers of an election in conducting the election, no reliance can be

placed upon any of their acts, and their return must be rejected as wholly unreliable. The party claiming under the election must prove the actual vote in some other way. The only evidence as to what the vote was is from John V. Brown (page 79), one of the challengers, a Conservative, who says: "Finley got 11 and Wall 588, I think. I derived my information from being present and keeping a tally-sheet." This certainly cannot establish the vote, as his testimony at most can only be evidence of the actual number of votes cast, but one of the principal objections is that illegal votes were cast, and this, too, with the guilty knowledge of the officers of the election. There being proof that such illegal votes were cast, and the real number of legal votes not being proved, there is nothing upon which the true vote can be ascertained, and, therefore, the entire poll must be rejected; and your committee so find and determine.

The contestant has waived his tenth, eleventh, and twelfth specifications. The thirteenth is as follows:

That said election at the Sheriff's office precinct, in the court-house, within the town and county of Madison, and within the second Congressional district of Florida, was irregularly and illegally conducted, and null and void, so that no legal and valid election was held at said precinct; and I give you notice that I will urge that all the votes cast at said precinct be rejected on the following grounds, viz: 1st. Because the returns from said precinct show that the number of ballots counted out exceed the number of persons who voted at said precinct by eleven (11) votes, as evidenced by the poll-list; and that the whole number of votes were counted, there being three hundred and nine (309) votes cast and counted, and the poll-list shows only two hundred and ninety-eight (298). That one of the inspectors did not, as the law requires, publicly draw out and destroy so many of such ballots as were equal to such excess, thus tending to change the result of the election at said poll, contrary to the statute in such cases made and provided, and rendering it impossible to determine the legal vote cast at said poll. 2d. Because during the adjournment at dinner, on said election-day, the ballot-box of said poll was not kept in the possession of any one of the inspectors of the said precinct, and during said adjournment the ballot-box at said poll was concealed from the public; and, 3d. Because on the election-day, at said precinct, during the absence of the clerk of said precinct from the polls, a person who was not a clerk of said precinct, and not sworn as such, acted as clerk of said poll in taking names of voters, &c., without authority, and contrary to the law in such case made and provided.

The contestee answers:

To the thirteenth specification, I reply that I hereby interpose a general and special denial to each and every allegation contained in said thirteenth specification.

There was at this precinct a grave omission on the part of the officers of election in their failure to purge the poll as directed by the law of Florida. It appears from the testimony of Albert A. Ellenwood, one of the inspectors (pages 96, 97), that there were only 298 names on the poll-list while there were 309 votes cast and counted.

There appearing to be 11 more votes than names on the poll-list, it was the duty of the inspectors to replace the ballots in the box and have one of their number publicly draw out and destroy, unopened, so many of such ballots as were equal to such excess. (Section 22, above.)

This not having been done, it becomes a difficult problem to determine what shall be done with the poll. The statute having prescribed the method of and the person by whom the poll should have been purged, can it be purged in any other manner? Your committee, upon a careful consideration of the question, regarding it as settled that an entire poll is not to be rejected except after the fullest attempt to purge the poll of illegal votes, and, to ascertain the real vote by all reasonable means, have decided to regard this statute of Florida as providing a principle upon which, as well as a mode by which, the poll in such a case should be purged; and as the method was omitted without fraud, have not regarded its omission an act of such a character as to compel

the rejecting of the entire poll, but have decided to apply the principle established by the law, viz, that the excess of votes shall be regarded as thrown proportionately for both candidates, according to the entire vote for each, and that the drawing out in the manner provided by law would draw a proportionate number for each candidate. Your committee have taken from each candidate a proportionate part of said 11 votes.

The poll thus purged, will give Walls 240 instead of 248, and 58 for Finley instead of 61. Your committee have not regarded the other informalities, which are the not keeping the ballot-box in public view during the adjournment for dinner, and the acting of one Bogue for a short time as clerk without being sworn, in the absence of fraud, of such a character as to vitiate the election, and have therefore, found the actual vote as above stated. The fourteenth specification, as to Probate-office precinct, Madison County, is as follows:

That said election at the probate office in the court-house within the town and county of Madison, and within the second Congressional district of Florida, was irregularly and illegally conducted, and null and void; and no valid or legal election was held at said precinct; and I hereby give you notice that I will urge that all the votes received at said poll be rejected, on the following grounds, viz: Because at one time during the election on the 3d day of November, A. D. 1874, at said poll only one inspector or judge of the election of said poll was present at said poll, and received a large number of votes during the absence of the other two, during which time there was no legally-constituted board of inspectors at said precinct, rendering said election at said poll null and void.

To which the contestee replies by a special and general denial of each and every allegation. Your committee do not find any fact established to throw discredit upon the elections or returns at this precinct. Specifications 15, 16, and 17 are waived by the contestant. The contestee has also waived all his specifications as to frauds in other precincts, but claimed in his argument before the committee that the vote of Colored Academy should be allowed on account of the testimony of Brown as to the number of votes cast for each candidate, and that the vote at the Market-house precinct, in the same county, ought to be excluded on the ground that the certificate of the county canvassers was void "because the majority of the board were unofficial persons, not authorized by law to canvass the votes or make the return." This point was not raised in the contestee's answer, and therefore came too late to be considered. The board of county canvassers were at least *ipso facto* officers, and there is nothing to show their action was not in every respect regular and their return correct as to this precinct, and your committee see no valid grounds for its exclusion. The vote in this district, according to the State canvassers, stood—

| | |
|---|---|
| For J. T. Walls | 8,549 |
| For J. J. Finley | 8 178 |
| Majority for Walls | 371 |

As corrected it will stand thus, deducting in—

| | | |
|---|---|---|
| Gainesville No. 3, | 11 from Walls, | 1 from Finley. |
| Archer, | 33 from Walls, | 2 from Finley. |
| Newnansville, | 105 from Walls, | 14 from Finley. |
| Colored Academy, | 588 from Walls, | 11 from Finley. |
| Sheriff's Office, | 8 from Walls, | 3 from Finley. |
| | 745 | 31 |

| | |
|---|---|
| For Finley, 8,178—31 | 8,147 |
| For Walls, 8,549—745 | 7,804 |
| Finley's majority | 343 |

The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That Josiah T. Walls was not elected, and is not entitled, to a seat in the House of Representatives in the Forty-fourth Congress from the second Congressional district of Florida.

*Resolved*, That Jesse J. Finley was elected, and is entitled, to a seat in the House of Representatives in the Forty-fourth Congress from the second Congressional district of Florida.

JOHN T. HARRIS.
CHARLES P. THOMPSON.
JO. C. S. BLACKBURN.
JNO. F. HOUSE.
G. WILEY WELLS.
GEO. M. BEEBE.
E. F. POPPLETON.

I concur in the conclusion reached in the foregoing report, but believe the rule adopted in regard to the Gordon, Barnes's Store, and Archer precincts, in Alachua County, and the Sheriff's Office precinct unwarrantably liberal, and that the precincts named should be thrown out absolutely, which would largely increase contestant's majority. I also believe that under the statutes of Florida no vote can be counted if the voter's name is not on the registry-list in the hands of the inspectors or commissioners, even though it be on the list at the county-seat, unless the voter took the oath required by the (9th) ninth section of the election-law of that State.

JO. C. S BLACKBURN.

We concur in the result reached in report above set forth, but believe that the facts proven warrant the application of a more stringent rule to the precincts of Gordon, Barnes's Store, and Archer, in Alachua County, and the Sheriff's Office precinct, in Madison County, which would increase the majority of Mr. Finley.

E. F. POPPLETON.
R. A. DEBOLT.
G. WILEY WELLS.

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## VIEWS OF THE MINORITY.

Mr. M. I. Townsend, from the Committee of Elections, submitted the following as the views of the minority:

*To the honorable the House of Representatives of the United States:*

The undersigned, a minority of the Committee of Elections, in the case of J. J. Finley, contesting the seat now held by Hon. Josiah T. Walls, of the State of Florida, the sitting member, respectfully report:

That the district in question consists of the counties of Alachua, Baker, Brevard, Bradford, Clay, Columbia, Dade, Duval, Hamilton, Madison, Marion, Nassau, Orange, Putnam, Saint John's, Suwannee, and Volusia.

The majorities in the several counties were as follows:

| | Walls. | Finley. |
|---|---|---|
| In Alachua County | 811 | ..... |
| In Baker County | ..... | 100 |
| In Brevard County | ..... | 78 |
| In Bradford County | ..... | 328 |
| In Clay County | ..... | 98 |
| In Columbia County | 38 | ..... |
| In Dade County | ..... | 11 |
| In Duval County | 465 | ..... |
| In Hamilton County | ..... | 319 |
| In Madison County | 469 | ..... |
| In Marion County | 464 | ..... |
| In Nassau County | 130 | ..... |
| In Orange County | ..... | 553 |
| In Putnam County | ..... | 40 |
| In Saint John's County | ..... | 231 |
| In Suwannee County | ..... | 44 |
| In Volusia County | ..... | 204 |
| Total majorities | 2,377 | 2,006 |

Net majority for Walls, 371

The certificate of election was given to Walls, and notice was given by Finley to Walls on the 7th day of January, 1875, that he contested his election upon grounds specified in the notice. Notice is found in the case upon pages one to seven, inclusive. The specifications relate to the action of the State board and to the elections in sixteen different precincts.

The first specification, relating to the action of the State board, it is not material to consider here, as the questions raised in that specification are raised again under the second specification relating to the various precincts therein named.

Second specification, Gainesville, Alachua County, precinct No. 3.

The charges in relation to this precinct are:

First. Because no poll-book or list of names of electors voting was returned to the county judge and clerk of the county court with the certificate of election at the poll as required by law, but a paper list of names was found eight days after such election unsigned by any officers.

Second. Because a large number of illegal votes at said election were received and counted at said poll, viz, about fifty-eight votes not registered and five not checked as the law requires; only three appeared to be sworn, and because the oath administered to unregistered voters who voted at the said poll was not such as the law prescribes.

The return of the inspectors of this precinct is found in the case at pages 132 and 133 signed by three inspectors and the clerk, showing that Walls received at that precinct 207 votes, and Finley 16 votes.

It may be not improper to remark here that by the laws of Florida an elector may vote at any precinct in the county, and the case shows that very frequently the colored voters very largely resorted to one precinct, while the white voters as generally resorted to another, which may readily account for the large preponderance of votes for Walls at this precinct.

To prove the first charge, that no poll-list was returned with the certificate of votes, the contestant examines, at pages 63 and 64, W. H. Belton, county clerk, who states that no poll-list was found in the box with the votes returned. But Mr. Cessna, one of the county canvassers, went into the room where the election was held, and found what was supposed to be the poll-list.

John B. Brooks, at page 124, testifies that the poll-list found was the true poll-list; he was clerk and wrote the list; so the county canvassers had the true poll-list at the county canvass, although it was not returned as directed by law.

The laws of Florida, chapter 1625, being the first act of the first session of 1868, section 19, require that the clerk of election shall keep a list of the names of the persons voting at the precinct for which he is clerk, and by section 23 it is directed that this poll-list shall be transmitted with the certificate of the result of the election to the clerk of the circuit court.

The undersigned are clearly of opinion that the requirement of the statute that the poll-list should be returned is merely directory, and not mandatory, and that the failure to return the list under the circumstances does not vitiate the poll.

Second. By the constitution of Florida, article 14, section 6, the legislature at its first session after the ratification of the constitution was required to provide by law for the registration by the clerk of the circuit court in each county of all the legally qualified voters in the county; and further provided that after the completion from time to time of such registration, no person not duly registered according to law should be allowed to vote. The next session of the legislature after the ratification of the constitution sat in 1868, and, by chapter 1625 above quoted, provided for the registration of voters.

Section 7 of the act provides for the registration of voters by the clerk of the circuit court as provided by the constitution, and for the taking of the constitutional oath by the elector. Section 8 provides that no person shall vote unless he has been registered six days previous to the election.

The ninth section of the statute, apparently without authority from the constitution, authorizes the county commissioners, at a meeting to be held within thirty days preceding the election, to erase the names of persons supposed or shown to be disqualified to vote, and further provides—

That if any person whose name may be erased shall, on offering to vote at any election, declare on oath that his name has been improperly struck off from the list of registered voters, and shall take the oath required to be taken by persons whose right to vote shall be challenged (see sec. 16), such person shall have the right to vote.

"A complete copy of the list of names of all persons duly registered shall be furnished to the inspectors at each poll," &c., and the clerk shall prepare and certify such copies and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause them to be delivered to the inspectors before opening the polls. (Sec. 10.)

After looking at these provisions of the constitution and law we come to consider the question whether the constitution and laws were complied with in this precinct in respect to voters, whose names were not upon the copy registry-list furnished to this precinct.

First. The law presumes that the inspectors of the election, who are appointed by the county commissioners (sec. 9), and who are before the election commences sworn to do their duty in all respects (sec. 11), have done their duty, and that evidence will prevail unless clear and conclusive proof to the contrary is presented by the persons seeking to impeach their action.

McCrary, in his Law of Elections, sec. 87, says:

The doctrine that the acts of an officer of election within the scope of his authority are presumed to be correct, is strongly stated and ably argued in Littell *vs.* Robbins, (1 Bartlett,

138). The rule is here placed upon two grounds, viz: First, that the presumption is always against the commission of a fraudulent or illegal act, and, secondly, that the presumption is always in favor of the official acts of a sworn officer.

1st Bartlett Contested Elections, page 25, New Jersey case, says:

It is not sufficient that there should exist a doubt as to whether the vote is lawful or not, but conviction of its illegality should be reached to the exclusion of all reasonable doubt before the committee are authorized to deduct it from the party.

Second. The inspectors make their returns at the close of election day, and the witness Snowden, by whom alone the action of the inspectors, in not administering the proper oath to persons whose names are not found on the copy registry-lists, is sought to be impeached, testifies on the 21st day of August—see case, pages 74 and 75—more than nine months after the occurrence, and without memoranda. Snowden testifies that the persons whose names were not found on the copy registry-lists were required to take the oath in sec. 16, *i. e.*, the general oath, and the further oath that they had been registered previously thereto, but they did not swear that their names had been improperly struck off. "Of this I am confident." (Case, 74.) But this man was a United States supervisor, and, presumably, a man of intelligence; and he further testifies that when he found, at the polls, that the inspector had not the form of oath, "I went into the adjoining room and got the form of oath that I thought was required by the laws, &c., and they used that form during the day." It would require a pretty wide stretch of faith to believe that when he was looking for a form and "found a form," he found a defective form—merely because nine months afterward he was "confident," but did not produce that form, to see whether it was defective or not.

True, the inspectors themselves at 124, 125, and 126 do not remember the full form of the oath, but they swear that they intended to do their duty, and the undersigned submit with great confidence that it is not proved that the full and statutory oath required of persons whose names are not found on the copy register at the place of voting was not administered to every person who voted at Gainesville precinct No. 3, and whose name was not found on the list, and that no deduction can be lawfully or properly made from the vote cast at that poll.

Third. If the undersigned are wrong in this, and a deduction is to be made from the votes on account of persons voting without taking the proper oath, after a failure to find their names on the copy-list at the precinct, what number of names should be deducted?

Snowden, at page 74, thinks sixty-odd voted whose names were not found.

It will be remembered that the whole number who voted in the county was 2,373 (page 35), and the registration-list must have reached nearly or quite that number; and that the testimony nowhere shows that any person voted whose name was not in point of fact on the copy at the polls, except such as were not found by Belton, clerk of the county court, at the more deliberate examination made at the county clerk's office on the occasion of the county canvass. The proof in all cases is that the name of the person claimed not to be on the copy-register at the polls "could not," or "was not found" on the copy-register at the polls. Belton, clerk of the circuit court, says, at page 69, that after finding much the larger number of persons marked on the poll-lists as not registered, there might have been from 12 to 20 persons so marked whose names could not be found on the registry-list in the office.

So that in any event we have but from 12 to 20 votes at this precinct whose validity is in question.

The third specification of the notice of the contestant relates to *Lib-*

*erty Hill precinct*, in the county of Alachua. No evidence was given under this specification.

The fourth specification relates to *Micanopy poll*, in Alachua County. In respect to this Micanopy poll the notice alleged—

First. That the inspectors allowed 63 persons "whose names *were not found* on the registration-list of the county to vote at said precinct, the same not being sworn according to law."

Second. Because the ballots were numbered with numbers corresponding with numbers set on the poll-list opposite the voters' names.

Third. Because the polls were not opened until near two hours after the time prescribed by law, and that the delay tended to change the result.

It will be observed that the notice does not allege that the names of the 63 voters whose votes are complained of were *not in fact* on the registration-list, but only that they "*were not found.*"

The contestant calls to this point William H. Belton, clerk of the circuit court, and one of the county canvassers, who testifies, on page 69, that the county canvassers found "*the greater portion*" of the 63 persons marked on the poll-list as not registered..

C. H. Crisman testifies, on page 130, that three-fourths of the persons "sworn," *i. e.* because not found on the register, were "*afterward found*," leaving but 16 voters about the manner of whose swearing there can be any controversy.

Upon the question of what oath was taken by these persons whose names were not found, we have, first, the inspector's return and the presumptions arising from it.

Allen Barber testifies, at page 123, that the voters whose names were not found on the registry swore that they were legal registered voters of the State of Florida, and that he had forgotten the balance of the oath.

J. H. Stokes, a witness for the sitting member, at page 128, on his cross-examination, undertakes to repeat the oath from memory, but fails to remember the whole oath required by law. The contestant, on his part, gave no evidence as to the form of oath used at this precinct.

The undersigned hold that there is no evidence to show that the voters whose names were not found did not take the oaths required by law in such cases, and that in any event there are but 16 votes in regard to which there can be a controversy.

Second objection to the Micanopy poll. It appears from Belton's (the circuit clerk) testimony, on page 65, that at the county canvass the ballots were found to be numbered on their backs to correspond with numbers set opposite the names of the voters on the poll-list.

The undersigned are of opinion that such marking could not vitiate the poll, as there is no evidence that any voter knew that his vote was to be marked, or was in fact marked, and that this fault of the inspectors did not, and could not, deprive the electors of their rights.

Third objection to this precinct. No evidence was given showing or tending to show that the polls at this precinct were not opened at the proper hour.

Fifth specification. Gordon precinct, Alachua County. The objections to the vote in this precinct are;

First. That the clerk of that precinct was not sworn as required by law.

Second. That about forty persons were allowed to vote who were not registered and who were not sworn as required by law.

Third. This objection simply repeats the first.

Fourth. Because the ballot-box and poll-list do not correspond.

Fifth. Because no legal election was held at that precinct, and because of the reception of illegal votes, &c.

As to the first objection, it appears from the testimony, at page 70, that the clerk was sworn and his oath was returned.

As to the second objection, it does not anywhere appear what number of persons voted whose names were not found upon the registration-list, but Belton, the circuit clerk, says, at page 70, that a greater part of those represented on the poll-list as having voted at this precinct, and marked as not registered, were found. "I think the board found all of them on the registration-lists, except eight or twelve." The contestant does not prove what oath these voters took. The contestant calls, on the cross-examination of Cæsar Sweat, for his memory of the oath, eleven and a half months after the election, and he, at page 117, gives what he can remember of the oath, and says he cannot remember the rest. So that the legal presumption that the officers administered the right oath is strengthened by what evidence is given upon the subject, and the undersigned hold that all the voters at this precinct who were not registered, *i. e.*, eight to twelve in number, were properly sworn.

As to the fourth objection, it appears from the testimony of William H. Belton, clerk of the circuit court, at page 70, that the vote of the precinct, as by return, was 152; that the number of names on the poll-list was 158; that the number of votes in the box was 173. These votes we find, at page 141, were divided as follows: Walls, 86; Finley, 66. These sworn officers stand in all respects unimpeached, and for that reason their return is the better evidence of what was the true state of the vote at that poll. As to the poll-list, it may very possibly be erroneous in containing names of persons who offered to vote, but who in fact did not, and names may have been surreptitiously added after the list had been returned. As to the votes found in the box, the 21 in excess of the return may have been blank as to member of Congress and the box may have been tampered with. That the return should prevail in such a case, see McCrary's American Law of Elections, section 278.

No other evidence than what is above set forth was given as to the fifth objection, and that objection need not be further considered.

Sixth specification. Barnes's Store precinct.

The objections made by the contestant to this poll are:

First. The clerk was not a registered voter, and was not a citizen of the United States.

Second. The inspectors and clerk were not properly sworn before entering upon their duties, and did not return the oath with the poll-list.

Third. There was a discrepancy between the poll-list, the votes in the box, and the return.

| | Votes. |
|---|---|
| Return states | 190 |
| Votes found in box by county canvassers | 194 |
| Names on poll-list | 181 |

Fourth. Because 125 illegal votes were cast at the precinct.

To the first objection the contestee answers, admitting, on page 10, that the clerk at this precinct was not a registered voter, nor a citizen of the United States. But as it appears that the clerk was sworn to do his duty as the law requires (see testimony of Tropp, pages 122 and 123; that of Barnes, page 127), this clerk was an officer *de facto*, and would be liable to the penalties provided by law for any violation of duty, and an innocent voter cannot be deprived of the benefit of his vote for that cause.

As to the second objection, it appears that the oath of the inspectors and clerk was not returned as directed by law (see testimony of Belton, circuit clerk), but Trapp, at pages 122, 123, and Barnes, at page 127, show that the inspectors and clerk were sworn; and, in the opinion of the undersigned, these inspectors and this clerk having, for aught which appears, conducted the election legally and honestly, the failure to return the oath does not vitiate the poll.

As to the third objection, the allegations were found to be true, viz, the inspectors and clerk return 190 votes as cast. The box, when opened by the county canvassers, contained 194 votes, and the poll-list showed but 181 names. The undersigned, for the reasons given above in relation to the discrepancy found to exist between the returns, the poll-list, and the ballot-box of the Gordon precinct, are of opinion that the evidence establishes the fact that the true number of votes was returned.

No evidence was given under the fourth objection.

Seventh specification. Archer precinct, Alachua County. Under this specification the objections were:

First. Because the inspectors and clerk were not legally sworn.

Second. Because there were many illegal votes received from persons not registered and were under age, without taking the oath required by law.

Third. Because one Saunders, who claimed to be a deputy United States marshal, so dictated and overawed the inspectors that they did not fairly and impartially discharge their duty.

Fourth. There was so riotous a crowd that voters left the poll.

Fifth. This objection was very like the third.

Sixth. Because the ballot-box was not kept in plain view of the electors during the adjournment for dinner.

Seventh. Because there was a great discrepancy in the returns from said poll—no registration-list returned. Because the polls were not opened for at least one hour after the legal time, and a large number of illegal votes were received and counted for contestee.

As to the first objection, contestant, at pages 54 and 56, calls Geiger, one of the inspectors, who testifies on the 19th of August, 1875, that although he signed a form of oath, he was not sworn. Green R. Moore, another inspector, at 57, testifies that the inspectors and clerk were not sworn, although they signed a paper. But Washington, the other inspector, testifies, at page 112, that he was sworn, and identifies Exhibit A, on page 131, as the oath taken. Allen M. Jones, at 115, testifies that he administered the oath (Exhibit A, page 113) at the time of opening the polls, and that he administered oath (Exhibit C, page 143) to the clerk. Belton, circuit clerk, at page 71, testifies that the oaths of office and certificate of result were regular.

So that objection is not sustained, and the men who had returned their own oath as inspectors had forgotten.

As to the second objection, that persons voted who were not registered, Belton, circuit court clerk, testifies, at page 71, that the county canvassers compared the poll-list from Archer precinct with the registration-lists of the county, and found that *nearly all* the persons who were thought to have voted there without being registered, were upon the registry-lists.

Gieger testifies, at pages 54 and 55, that he objected to about thirty-five as not registered, but he does not say whether they did or did not take the proper oath. Green R. Moore took the oath and voted. "I think (this was August 19, 1875) that the oath they took was that in the sixteenth section," but he does not say he even thinks that they took no

other. Inspector Washington swears, at 113, that the persons whose names were not found were properly sworn. On page 114 he swears that they, when sworn, were asked if they had been registered, and they swore they were, "and something else I can't remember;" they swore they were registered, &c.

Allen M. Jones says they were asked first how long they had lived in the State of Florida; what were their names; how long they had been living in the county; if they had ever been registered; how old they were, and they took the oath in section 16. They swore that they were registered. No man even expresses a belief that they did not take the full oaths required by both the ninth and the sixteenth sections; and the presumption that the sworn officers did their duty is controlling evidence in this case that these men whose names were not found on the copy registry-lists took both oaths required by law in such cases, as nearly all of the thirty-five not found on the registry-lists were afterward found to be; then the controversy on this point becomes of small importance.

As to the third objection, that Saunders overawed the inspectors, there is no evidence worthy of a moment's consideration; and so in regard to the fourth objection, that there was a riot there; and so in regard to the fifth objection. In regard to these matters, Geiger testifies, on page 54, 55; Moore, on page 58; Washington, on page 113, 114; Jones at 115, and so on.

As to the sixth objection, that the ballot-box was not kept in plain view of the voters, it is sought to be made out by Geiger, at page 56.

He says that while they adjourned for dinner the ballot-box was shut up in the house where the election was held, with all the doors and windows shut. Inspector Geiger swears that he voted for Finley. Inspector Moore swears that the box was "closed up in the house, concealed from public view" at dinner time; that there was no one in the house but himself and Inspector Washington while Geiger was gone to dinner. He says, on his cross-examination, that the box was not tampered with during the hour of adjournment for dinner. This man, too, voted the conservative ticket. (Page 58.)

Inspector Washington was nominated by Geiger, conservative, and friend of Finley (113), so that these men did not tamper with the box for Walls's benefit, and the irregularity at dinner time did not vitiate the poll.

As to the allegation in the seventh objection, that there was great discrepancy in the returns from said poll, it appears from Belton's testimony, on page 71, that the ballot-box and return showed 318 votes, but the poll-list showed 320 names; and the return and ballots fix the true vote.

The evidence above referred to shows that there was not a particle of disorder at the polls. No "registration-list" was required by law to be returned. The poll-list, we see, was in Belton's hands. As to the time when the polls opened, Geiger thinks, nine months after, August 19, 1875, that the polls were not opened until 9.30, by Green R. Moore's watch. Green R. Moore was the other inspector. (Page 56.) But Green R. Moore, on page 58, at bottom, cannot tell at what hour the poll was opened or whether it was opened by his watch. Inspector Washington, at page 113, thinks the poll was opened at 8, as required by law, but is not certain; it was a cloudy morning. Allen M. Jones swears (at 115) that the polls opened at 8 and closed at sundown, as required by law.

It will hardly do on such evidence to find that these friends of Finley's

intentionally violated the law in regard to opening and closing the polls, in order to work a fraud in the interest of Walls.

The undersigned therefore hold that the election at this poll was conducted honestly and fairly, and with intent to carry out the law, and that no essential informality occurred at the time of the adjournment for dinner.

Specification eighth. Newnansville precinct, Alachua County. Under this specification the objections are:

First. Henry C. Parker was not legally chosen or sworn as inspector.

Second. Because the key of the ballot-box was, during the day, in the hands of Joseph Valentine, a friend of contestee, and who was neither inspector nor clerk. Ballot-box not sealed during dinner-time. Some one hundred and thirty non-registered voters were allowed to vote without taking the proper oath. That counting was begun before the polls closed, and votes were taken during the counting. Ballots not counted by the officers. Ballot-box, &c., were not duly returned to the circuit clerk, but were returned by said Joseph Valentine.

Belton, circuit clerk, at pages 71 and 72, states what occurred at the county canvass, where the contestant opposed and raised objections, and it does not appear that any objection was then made that the inspectors did not all take the legal oath. The presumption is very strong that the oath was returned in proper shape.

Upon the subject of Parker's election as inspector, he himself testifies to his election at 72, 73.

Joseph W. Valentine says, at 121, that Parker was elected in the place of Richards, an inspector who could not serve; that he was elected when about twenty votes had been cast, and that witness, as justice of the peace, administered the oath to Parker, the other inspector and clerk, and that the oath was duly returned. Lewey, the clerk, testifies, at 19, that the inspectors were sworn. It appears from Belton's testimony (at 67, and by the return at 137) that two of the inspectors who were originally chosen by the county commissioners, Simpson and Valentine, acted all day, and that there was at all events no such incompetency about Parker as to vitiate the election.

As to the second part of this objection, that the key of the ballot-box was, for a part of the day, in the hands of Joseph Valentine, Parker, at page 73, says Joseph Valentine was found to have the key when they came to count the votes. This is not controverted by evidence, and must be taken as established. The undersigned believe, however, that such fact, under the circumstances presented, does not vitiate the poll.

As to the third part of this specification, that the ballot-box was not sealed during the dinner adjournment, is established by Parker at page 73, and not controverted. But as he also states that the box was all the while in the hands of the inspectors, and as there is no allegation or pretense that the box was tampered with, the undersigned are clearly of opinion that this irregularity did not vitiate the poll.

As to the next objection, that some one hundred and thirty voters whose names could not be found on the copy registration were allowed to vote without taking the full oath, it appears by the testimony of Dupuis, at pages 59-60 to 61, that 120 voters were challenged as not on the copy registry lists, and yet voted. Dupuis swears that he believes a majority of them had been registered, and he knew not how they got off the list. *These challenged voters did not swear that their names had been improperly stricken off.* To show the inspectors meant to do their duty, Parker, the contestant's inspector and witness, testified, at page 74,

that he administered the oath to most of them. The testimony of Lewey, clerk, at page 119, shows that the oath administered was nearly correct. Indeed, he swears that it was absolutely correct according to the statute, although he cannot repeat the statute form. The undersigned are of opinion that the opinion of Dupuis, that the challenged whose names were not found did not take the full oath, is stronger evidence that those 120 persons were not entitled to vote than we find elsewhere, and perhaps these 120 votes should be deducted from this poll. But the undersigned seriously doubt it. As no effort was proved to have been made to find whether any of these names were in fact upon the original register, one hundred and twenty must be deducted, if any. But the undersigned believe the returns of the inspectors must be taken as conclusive evidence in this case that the inspectors did their whole duty.

As to the last objection to the vote at this poll, that the ballot-box and returns were suffered to be taken to the county-seat by Joseph Valentine, who was neither inspector nor clerk, the fact is fully established by the testimony of Saunders, at pages 166, 167, and not contradicted. But as we are furnished with two original certificates or returns, made by inspectors and clerks, of what the vote actually was at this poll, and as there is no pretense that those certificates were erroneous, we deem this fact does not vitiate the poll.

Dupuis thinks the polls were closed after sunset (page 59), but Parker says (at 73) that they finished canvassing before dark. There cannot have been any serious error in this respect. Dupuis says William Hawkins voted after they began to canvass. This, by itself, has no significance.

The undersigned are of opinion that the return at this poll should stand in all respects, but if any deduction is made it can only be of the 120 persons whose names were not found upon the register, and it is not necessary to decide in what manner the 120 votes should be disposed of, as the sitting member will be elected though all the votes not found on the register should be deducted from his side, unless the whole vote at the Colored Academy precinct of Columbia County should be rejected; and if that vote shall be rejected the sitting member will be defeated, whatever disposition be made of the votes in question.

For the reason that will be apparent in the further progress of this report, we, for the present, pass the ninth specification, and consider the next specification under which any evidence was given:

Thirteenth specification: Sheriff's office precinct, Madison County.

The objections under this specification are:

First. That there was a discrepancy between the poll-list and the ballot-box, there being an excess of ballots, and that the excess was not drawn and destroyed.

Second. The box at the adjournment was kept in the possession of one inspector.

Third. Because a person, not a sworn clerk, wrote some names of voters upon the poll-list during the voting, in the absence of the clerk.

As to the first objection: By the testimony of Ellenwood, at page 96 to 103, it appears that the return of votes in the clerk's office was 309, and the votes as shown by the poll-list were 298, and that was the state of things at the polls, and that the extra 11 votes were not drawn as required by law.

The inspectors and clerk in all four were equally divided in their politics, two and two, so that no wrong was intended. The extra 11 votes

may now be deducted, either proportionally or wholly, from Walls, and there will be no difference in the result.

As to the second objection, the box was not, during the day, out of the possession of the Democratic members of the board of inspectors, and the honesty of all parties is fully maintained. Testimony runs from 96 to 108.

As to the third objection, a man was sworn to act for clerk in the absence of the regular clerk, and wrote six or seven names of voters. This irregularity cannot vitiate the poll.

Fourteenth specification: Probate office precinct, Madison County. The objection to the election at this precinct is that one inspector acted during some parts of the day alone, and received a large number of votes when the others were absent.

To maintain this objection, the contestant calls, at pages 88, 89, and 90, a witness who swears that he was a Democrat, and was present when the clerk was in charge of the box at dinner-time. Wardlaw, one of the inspectors, was a Democrat. The clerk also voted the Democratic ticket. This witness, who shows that he was present with the clerk some forty minutes, says there was no voting during the absence of the inspectors that he saw.

Wardlaw, one of the inspectors, is called by contestant, at page 91, and entirely fails to make out that any votes were taken by a single inspector. On page 92, after having his recollection refreshed, he thinks he took votes when the other inspectors were absent; but on close examination he says he cannot remember that that was the fact.

Parramore, on page 95, thinks that several votes were taken by Wardlaw when the other inspectors were absent. So it appears that it is conceded that Wardlaw and the clerk, both of whom were opposed to Walls, were present all the time, and that it is uncertain whether the other two were not present while every vote was cast. This poll is not impeached.

We have now scrutinized every poll in regard to which evidence was given, except the Colored Academy precinct in Columbia County, where it is alleged that actual fraud was practiced, and for that reason we have reserved this precinct to the last.

Ninth specification. Colored Academy precinct, Columbia County. The allegations of misconduct here are not divided into specific objections, but a large number of charges are grouped together.

A very large colored and Republican vote was cast at this precinct and a very small white and Democratic vote; and this might suggest, the idea of fraud but for two facts, which abundantly appear in this case as well as in several other election cases arising in the more southern States.

The first is that, by the laws of these States, voters may cast their ballots at any precinct in the county; and, second, great unwillingness is everywhere manifested on the part of both blacks and whites to vote together at the same precinct; and it will be noticed that the voting must have been as thoroughly white and Democratic at some other of the precincts, as this was colored and Republican, as Walls's majority in the county was but 38. The county was known, before this election, to be very close, or Democratic, as is shown abundantly by the testimony given in relation to this precinct. The contestee starts with three difficulties in his way in regard to this precinct: First, the county clerk's office was burned soon after the election, and the original return cannot be found, nor the original registration-list; second, Johnson, who figures much in the testimony of the contestant, was, as the evidence shows,

murdered soon after the election, and the contestant could not call on him for explanations if he would; third, Walls was not present, in person, at the taking of this testimony, and the committee, on Walls's application for leave to rebut the allegations in relation to that poll, felt constrained to refuse him permission to do so.

The testimony is, therefore, *ex parte*, or at least all called by one party. By section 9 of the law above referred to, the inspectors are to be appointed by the county commissioners. By the 11th section: "In case of the death, absence, or refusal to act of any or all of the inspectors appointed by the county commissioners, the electors present at the time of opening the polls shall choose," &c.; "the inspectors shall appoint a clerk," &c.

We are nowhere furnished with the names of all the inspectors who were originally appointed, the contestant not having proved their names. We find, at page 77, that Charles R. King, John W. Tompkins, and Aleck Hamilton *acted* as inspectors. (Page 78.) John Carroll acted as clerk. On page 80, Carroll says: "Mr. Cleveland told me he could not serve that day." Tompkins, on page —, swears that Cleveland was a regularly-appointed inspector. Johnson told Tompkins, the day before, that Cleveland declined to act, and recommended him to Tompkins. Tompkins says Johnson said that it was probable another inspector would not act, and that it was probable he would have Charles R. King for the other inspector. Tompkins and Carroll staid at Johnson's the night before election, King did not, and Hamilton is not proved to have done so. As nothing is said to the contrary, Hamilton is presumed to have been an originally-appointed inspector. As these men acted as inspectors and clerk, and as no proof is given to show that they were not, in fact, appointed, and as it is now claimed that their return went into the Columbia County return, counted by the State board, and found at page 23, and as it is now sought to deduct this vote from the State count, these inspectors and clerk must be taken to be officers *de facto*, and full faith, *prima facie*, is due to their acts.

But it is said we must infer that a fraud meets us at the outset; that the commencement of business in the morning was hurried fraudulently to prevent, and that thus Johnson did prevent, the regularly-appointed inspectors acting as such. But not a word of evidence is given to show that Cleveland, the inspector, or the other unnamed inspector, came to the polls, which certainly the contestant could have done if it was true; and he it is who gives Johnson's declarations of the day before, that both these men had declined to serve. If upon these facts any one *infers* that Tompkins or King was appointed early to prevent the two absent inspectors acting, he draws that inference in defiance of every rule of evidence ever acted upon by any sane man for all time. *They were not appointed and set to work early for any such purpose.*

Had Johnson an object in having the work of election done as fast as it might lawfully be done? Upon this subject the only evidence is from such persons as the contestant chose to present. The vote actually cast was 600, as Brown testifies at page 79. Somebody makes the vote 599. The polls must open at 8, giving two hundred and forty minutes before 12 o'clock; the sun sets November 3 at 4.54, giving two hundred and ninety-four minutes after 12 o'clock. If the poll opened at just 8 a. m., and closed at sundown, *i. e.* giving five hundred and thirty-four minutes of time in which to do the work of voting. Now as it was expected to be the place where the colored voters would vote, it was clear that the day must be a diligent one, and a good deal more than one vote must be cast in a minute if the work was to be done.

This furnishes an honest and laudable reason why Johnson was in a hurry all day. It is perfectly certain that Johnson's declarations to individuals *are not evidence on which to decide the rights of the people to representation*, but certainly the contestant is bound by evidence which he gives of what Johnson said his object was. Contestant proves by Carroll, who acted as clerk (near the bottom of page 80), that "the object was to open the polls as early as possible so as to let them all vote. Johnson was estimating how many must vote in a minute to get through that day." This shows a laudable and legal purpose, and, so far as the opening of the polls is concerned, there was no purpose on the part even of Johnson to violate the law or work a fraud. *The contestant shows that affirmatively.*

This brings us to the question as to when the polls did in fact open.

Barret set his watch the day before by railroad time (see pages 76, 77), and found them voting at about 8 o'clock by his watch.

Brown, at page 78, says he got there at about 7 a. m., and not more than ten minutes after, and found Dr. Johnson issuing tickets; but does not say that they were voting. Perhaps this, however, may be inferred from the testimony on the 79th page.

Weeks says, at page 83, that he got there at about 7 o'clock, and that about twenty had voted, as he found, on examination, from the lists.

Tompkins says, at page 84, that "the inspectors had to consume about twenty minutes after their arrival before voting began; then they had to arrange the table and desk for the clerk. *It was quite a cloudy morning. It was impossible to tell, without a watch, when the sun did rise.* It occurred to me that it was not 8 o'clock. Mr. Carolina stated that by his watch it was 25 minutes past 7 o'clock. Duval Selph said it was 2 minutes past 8 by his watch. By Armstrong's watch it was three or four minutes past 8; and Armstrong said his watch was right from a watch-maker's, and that he had watch-maker's time. We consented to be governed by the majority of watches present."

Now, remembering that this is contestant's evidence, there is not a hint in the case that the inspectors did *not believe* that 8 o'clock had arrived when the voting began, and among a collection of watches, not probably together worth $10, it would be very unsafe to infer that the voting actually commenced before 8. Besides, the contestant's witness Weeks (at page 88) examined the poll-list when there were 20 names on it, and no hint is anywhere given that any person voted before 8 who was not entitled to vote. This Weeks was the candidate against Johnson for the senate. (See page 23.) We, then, infer that the early commencement of voting is not proved to be fraudulent, and was not, in fact, fraudulent.

Another circumstance was during the argument urged against the inspectors to show that they were not honest officials, to wit, that Tompkins spent the night before the election at Johnson's house. Now, look for a moment at the state of things in Columbia County. A scattered population casting 1,350 votes, or thereabout, in the whole county, is about to vote. Republicans and Democrats hate each other too badly to vote peaceably together. They each are to vote at their chosen precinct. Inspectors must do the same thing and traverse perhaps the whole county. Johnson is a man of some consideration, and perhaps has a comfortable house to stay in. He is interested in the com ng election, and finding that two of the inspectors appointed from the county-seat are to fail, he knowing how few have intelligence enough to act, solicits two other gentlemen to act as inspectors, and invites one, who will be presumed to have resided at a distance, to come and spend

the night at his house, and the same is true as to the clerk. Considering the condition of affairs disclosed by the contestant's witnesses, these acts are not only consistent with the integrity of the inspectors, but such as must almost necessarily have occurred.

We are, therefore, of opinion that the inspectors at this poll stand wholly unimpeached, and that their conduct at the polls was above reproach.

But it is urged that this poll is tainted with fraud because Dr. Johnson, in addition to the general activity he evinced, planned and worked great schemes of fraud. Carroll, who acted as clerk, is called to say (page 80) that on the evening preceding the election he was at Johnson's house, and that Johnson came in and "*brought a book, which I took to be a copy of the registration-book.* I took down fifty names, more or less, from the book Dr. Johnson took from the shelf. Dr. Johnson called off the names, and I took them down." Not another word or act of Johnson in relation to that list of names is proven. The possession of a copy of the registration was necessary to any person wishing to look after the election, and copies of portions of it were necessary for the purpose of sending by minor agents to the localities for voters, and for many other purposes, and yet it is gravely urged that we are to disfranchise 600 voters on the idea that possibly this copying was with a fraudulent design.

For the remaining evidence of Johnson's fraudulent designs we are called upon to give credence to one Duval Selph, whose testimony is found on pages 85, 86, and 87. This man is a self-convicted villain, and probably perjurer. We say he is a self-convicted villain. He tells us on page 86 that he, on the day previous to election, at the request of Dr. Johnson, put forward his watch ahead of the time one hour and twenty minutes, and then went to the polls on the morning of election and showed his watch and stated the time as shown by it, for the purpose of misleading the electors and defrauding them and the country. Every honorable mind revolts at the mention of such rascality, and no man will give credence to the testimony of such a villain unless corroborated by worthy testimony. There is no lawyer who will fail to apply to the testimony of this man the doctrine "*falsus in uno falsus in omnibus.*" Being confessedly a villain in one respect, he must be taken to be a villain "all the way through."

This witness says, on page 86, that Johnson expected 52 votes from other counties. But he says, on page 87, that these 52 votes were absent from the county and were or had been registered voters of the county. These were the voters brought from other counties, at an expense of three hundred and twenty to three hundred and seventy-five dollars, mentioned by him on page 85, so that both bane and antidote as to this matter are furnished by the same Duval Selph. Can we say that these 52 names were not the "*50 names, more or less, written by Carroll*"? (See page 80.)

Again, Duval Selph says (on page 86) that "Johnson asked somebody about 4 o'clock if they could not fix up a trick to capture the Ellisville returns as they were bringing them to Lake City." We submit that this remark of Johnson's, if made, is not evidence in the case, and that Selph is not worthy of credit as a witness, and, further, that the testimony would not be received in any court except upon a cross-examination of Johnson were he a witness.

But Selph was too ready and useful a man to stop so. He brings forward a fact near the close of his testimony, on the 87th page, which had been noticed by no other person, not even by Weeks, Johnson's

opposing candidate, or, if noticed, was considered perfectly innocent. Its wickedness had only been discovered by the immaculate villain Selph. "The reason I think the election was conducted unfairly is, that from seventy-five to one hundred persons received tickets from Johnson. He called a name and gave a number, and they put it through an aperture in the wall where the ballot-box stood, and called out the name and number, and the ballot was thus received. This was one of my reasons. Johnson called the name and gave the number which he gave to the parties, from which he told me was a copy of the registration-list, and the parties took the number with the ticket and passed it through the hole to the inspectors." Selph "believed they were voting under fictitious names." If this be true, seventy-five to one hundred men voted under fictitious names right before the eyes of Weeks, Johnson's competitor, and Weeks never conceived there was any wrong in it, and the real owners of the names did not appear—not one of them—and have never been heard of since. But mark, even the villain Selph does not volunteer a word of knowledge that one of these men really used a fictitious name. The reason why the numbers were given to the men and were handed in by them was, that the number to vote was large. The whole registration-list of one thousand three hundred and fifty to perhaps two thousand names had to be looked over, and if the number that the name stood on the list could be stated, the vote was cast in a quarter of the time. A lamer pretense of fraud than that sought to be conjured up against Johnson was never invented.

It is necessary now to look into the charges of illegal votes.

Barnett, on pages 77 and 78, says that "not less than 75" voted whose names could not be found on the registry-list, and who he swears, on page 76, did not take the proper oath. He also speaks of 5 whom he knows to have been residents of other counties and one penitentiary convict who voted. But, on 78, he says he only knew that the men were non-residents because of conversations he had with them, and he further says that the penitentiary convict said he had been pardoned. But being convicted of a crime and being sent to the penitentiary does not disfranchise. The conviction must be for "felony, bribery, perjury, larceny, or other infamous crime." (Laws of 1868, sec. 6.)

We need not quote authorities to show that conversations of voters do not prove their residence nor non-residence, especially as they all swear they were residents of Columbia County.

It appears from Tompkins's testimony that the men whose names could not be found were challenged, and took both oaths required by law. So that a conflict is raised between the witnesses as to whether the full oaths were taken by the persons whose names could not be found. These witnesses are called to their memories in August, 1875, nine months after the election, and we prefer to give confidence to the presumption that the officers did their duty. But if the 75 votes were rejected, and either taken wholly from the sitting member or proportionally from the sitting member and contestant, Walls would still be elected.

The doctrine is laid down very fully in McCrary's American Law of Elections, sections 303, 304, and 305, and in the authorities there quoted, that it is very rarely justifiable to reject a whole poll, but if it appears that illegal votes have been admitted, the poll should be purged. We have shown that the evidence in this case fails to show that a single illegal vote was polled at this precinct, and therefore there is no occasion to exert even the power of purging the poll.

The committee recommend the adoption of the following resolutions:

*Resolved*, That J. J. Finley was not elected and is not entitled to a seat in this House.

*Resolved*, That Josiah T. Walls was elected and is entitled to a seat in this House.

MARTIN I. TOWNSEND.
JOHN H. BAKER.
WM. R. BROWN.

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## LE MOYNE vs. FARWELL.—THIRD CONGRESSIONAL DISTRICT OF ILLINOIS.

Allegations of fraud committed: disregardof law by election officers, ballots improperly counted, paupers permitted to vote, and ballot-boxes tampered with.

It was held that, where fraud is shown to exist, the poll shall not be rejected unless it be impossible to purge it of the fraud.

A vote once legally cast cannot be set aside, except upon proof so strong as to produce the certain moral conviction that the said vote was illegal. The burden of proof is on the party assailing the vote.

Inmates of a poor-house, which is proven to be their permanent residence and abiding-place, have a right to vote under the laws of the State of Illinois.

Majority and minority reports submitted.

Minority report rejected May 3, 1876—yeas, 89; nays, 129; not voting, 72.

Majority report adopted, and J. V. Le Moyne sworn in.

Authorities referred to: American Law of Elections, sec. 42, sec. 356, sec. 313, sec. 304, 305, page 231; sec. 442; Revised Statutes of Illinois, 1874, chap. 46, secs. 65, 66, 67; New Jersey Cases, 1 Bartlett, page 25; Rogers's Law and Practice of Election Committees, page 116; Cessna *vs.* Myers, McCrery, page 426; 5 Pick., page 234; 11 Pick., page 410; American Cyclopedia; Phill. on Dom.; 10 Mass., page 483; 4 Wash. C. C. R., page 514; Robts. Ecc. R., page 75; Monroe *vs.* Jackson, 1 Bart., page 98; Covode *vs.* Foster, 2 Bart., page 600; Taylor *vs.* Reading, 2 Bart., page 661; Scull *vs.* Findley, Pennsylvania Senate; 29 Illinois, Paine *vs.* The Town of Durham, page 125; Freeport *vs.* Supervisors, 41st Ill., page 41; Illinois Constitution, sec. 1, art. 7; Freeport *vs.* Supervisors of Stephenson Co., 41st Ill., page 491.

### April 10, 1876.—Mr. John T. Harris, from the Committee of Elections, submitted the following report:

### MAJORITY REPORT IN THE CASE OF J. V. LE MOYNE vs. C. B. FARWELL, THIRD CONGRESSIONAL DISTRICT OF ILLINOIS.

*Notice of contest.*

To the Hon. CHARLES B. FARWELL:

You are hereby notified that I intend to contest your election to a seat in the Forty-fourth Congress of the United States of America as Representative of the third Congressional district of the State of Illinois, at an election held in said district on the 3d day of November, instant, upon the following grounds, viz:

First. That in the following election precincts of said district the votes cast thereat were not properly counted by the judges of the said election precincts, and the returns made by the said judges were incorrect, viz: the election precinct of the town of Proviso; the election precinct of the town of Northfield; the first and second election precincts of the town of Cicero; the election precinct of the town of Hanover; the election precinct of the town of Elk Grove; the election precinct of the town of Barrington; the election precinct of the town of Leyden; the election precinct of the town of Jefferson; the first and second election precincts of the town of Evanston; the election precinct of the town of Palatine; the elec-

tion precinct of the town of Wheeling; the election precinct of the town of Maine; the election precinct of the town of Norwood Park: the election precinct of the town of Niles; the election precinct of the town of New Trier; the first, second, third, and fourth election precincts of the sixteenth ward of the city of Chicago; the first, second, third, and fourth election precincts of the seventeenth ward of the city of Chicago; the first, second, third, and fourth election precincts of the eighteenth ward of the city of Chicago; the first, second, and third election precincts of the nineteenth ward of the city of Chicago; and the first, second, third, fourth, and fifth election precincts of the twentieth ward of the city of Chicago. That by the improper counting of said votes a large number was counted and returned as having been polled for you which you did not receive, and a smaller number was counted and returned for me than I actually received.

Second. That a large number of persons, to wit, more than five hundred, were permitted to vote for you at the following election precincts in said district, viz: the first, second, third, and fourth precincts of the sixteenth ward of the city of Chicago; the third precinct of the eighteenth ward of the city of Chicago; the first precinct of the nineteenth ward of the city of Chicago; and the first, second, third, and fifth precincts of the twentieth ward of the city of Chicago, who had no legal right to vote thereat.

Third. That the judges of election in the first precinct of the twentieth ward of the city of Chicago did not comply with the law, and allow a challenger of voters, chosen by or in behalf of the party of which the undersigned was the nominee for Representative in said Congress from said third Congressional district, into the room where said election was held; that said judges of election afterwards removed the ballot-box containing the ballots cast in said precinct at said election to a hotel in said precinct, known as the Hatch House, the proprietor of which was a candidate for office at said election, and was there kept for two days and fraudulently tampered with, and, after being so tampered with, the ballots contained therein were counted improperly and the returns then made by said judges.

Fourth. That the judges of the third precinct of the eighteenth ward of the city of Chicago, in said district, failed to comply with the law in this, that said judges did not count and seal up the ballots cast therein at said election, and did not make out the returns thereof at the time and in the manner prescribed by the statute; that the said judges allowed the ballot-box containing said ballots to remain in possession of parties who were not judges or officers of said precinct, after the polls were closed, until the next day after said election was held, when the said ballots were counted, and the returns made, in which counting of said ballots and preparation of said returns persons who were not judges or officers of said election participated.

Fifth. That in the first, second, third, and fourth precincts of the sixteenth ward; in the third precinct of the eighteenth ward; in the first precinct of the nineteenth ward, and in the first, second, third, and fifth precincts of the twentieth ward, of the city of Chicago, in said district, frauds were committed at the polls, whereby a large number of illegal votes, to wit, one thousand, were received and counted for you, and the votes of a large number of legal and qualified voters, desiring, intending, and offering to vote for me, were refused by the judges of election at said polls.

Sixth. That at the polls of the first precinct of the town of Evanston, in said district, a large number of illegal votes, to wit, two hundred, were received, counted, and returned for you by the judges of said election precinct.

Very respectfully,

JOHN V. LE MOYNE.

CHICAGO, ILL., *November* 27, 1874.

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*Answer of contestee.*

CHICAGO, *December* 24, 1874.

To JOHN V. LE MOYNE, Esq.:

Having received a notice of your intention to contest my election to a seat in the Forty-fourth Congress of the United States of America, as the Representative of the third Congressional district of the State of Illinois. Said election was held in said district on the third day of November, A. D. 1874. For answer to the said notice, I deny each and every allegations and charges therein contained, and say that if they were true you are not entitled to a seat in said Congress in my place. And more particularly I deny—

First. That in the following election precincts in said district, viz, the election precinct of the town of Proviso, the election precinct of the town of Northfield, the first and second election precincts of the town of Cicero, the election precinct of the town of Hanover, the election precinct of the town of Elk Grove, the election precinct of the town of Barrington, the election precinct of the town of Leyden, the election precinct of the town of Jefferson, the first and second election precincts of the town of Evanston, the election precinct of the town of Palatine, the election precinct of the town of Wheeling, the election precinct of the town of Maine, the election precinct of the town of Norwood Park, the election precinct of the town of Niles, the election precinct of the town of New Trier; the first, second, third, and fourth election precincts of the sixteenth ward of the city of Chicago; the first, second, third,

and fourth election precincts of the seventeenth ward of the city of Chicago; the first, second, third, and fourth election precincts of the eighteenth ward of the city of Chicago; the first, second, and third election precincts of the nineteenth ward of the city of Chicago; and the first, second, third, fourth, and fifth election precincts of the twentieth ward of the city of Chicago, or either of said precincts, the votes cast therein were not properly counted by the judges of said election precincts respectively, and that the returns made by the said judges, or any of them, were incorrect, as is in the said notice alleged. And I further deny that by any improper counting of the votes cast at said election in said precincts, or either of them, any number of votes was counted or returned as having been polled for me which I did not receive; and I also deny that a smaller number of votes cast at said election in said precincts, or in either of them, was counted or returned for you than you actually received, as is in said notice alleged.

Second. I deny that any person or persons were permitted to vote for me at the following election precincts, or in either of them in said district, viz, the first, second, third, fourth, and fifth precincts of the sixteenth ward of the city of Chicago; the third precinct of the eighteenth ward of the city of Chicago; the first precinct of the nineteenth ward of the city of Chicago; and the first, second, third, and fifth precincts of the twentieth ward of the city of Chicago, who had no legal right to vote thereat, as is in the said notice alleged.

Third. I deny that the judges of election in and for the first precinct of the twentieth ward of the city of Chicago did not comply with the law, and allow a challenger of voters chosen by or in behalf of the party of which you was the nominee for Representative in said Congress from said third Congressional district into the room where said election was held, as is in the said notice alleged. And I further say that no such challenger of voters was chosen by or in behalf of the party of which you were the nominee; and that no request was made of said judges for the admission of any such challenger into the room where the said election was held. And I further say that, although it is true that the ballot-box containing the ballots cast at the first precinct of the twentieth ward was removed from the place where said election was held to a hotel in said precinct, known as the Hatch House, and there remained for the space of two days after said election was held, as it lawfully might, yet the said ballot-box was not removed from the place where said election was held until after all of the ballots therein contained were fully canvassed, counted, and the result thereof publicly announced as required by law, nor until after the said judges of election had made a record of the number of votes cast for each candidate at said election, and had in all respects discharged their duties as such judges of election, excepting the making and signing of the formal return and depositing the same, with the said ballot-box, with the county clerk; that said judges of election having thus far completed their duties, at a late hour of the night after election, to wit, at twelve o'clock, on account of the illness of one of their number, adjourned to meet on the 5th day of November, A. D. 1874, whereupon, by the consent and agreement of said judges, their chairman took the said ballot-box into his possession, and kept the same in his possession until their meeting on the 5th of November, 1874.

The chairman of the said judges at the time of said election resided, and for a long time prior thereto had resided, at said Hatch House, and had apartments therein. The said ballot-box was taken to the apartments of said chairman, and was not opened or tampered with by any person whatever, nor were the ballots therein contained improperly counted or any improper returns made as is in the said notice alleged. And although the proprietor of said Hatch House was a candidate for office at said election, yet he never, in any manner whatever, had the possession or control of said ballot-box, or intermeddled therewith.

Fourth. I deny that the judges of the third precinct of the eighteenth ward of the city of Chicago, in the same district, failed to comply with the law in this: that said judges did not count and seal up the ballots cast therein at said election, and did not make out the returns thereof at the time and in the manner provided by the statute, as is in the said notice alleged. And I further deny that said judges allowed the ballot-box containing said ballots to remain in possession of parties who were not the judges or officers of said precinct after the polls were closed until the next day after said election was held, as is in said notice alleged. And I further deny that said ballots were not counted, as the law requires, on the day of said election; and that, in any counting said ballot, or in the preparation of the returns thereof, any persons who were not judges or officers of such election participated, as is in the said notice alleged.

Fifth. I deny that in the first, second, third, fourth, and fifth precincts of the sixteenth ward; in the third precinct of the eighteenth ward; in the first precinct of the nineteenth ward; in the first, second, third, and fifth precincts of the twentieth ward of the city of Chicago, in said district, or in either of said precincts, frauds were committed at the polls whereby any number of illegal votes were received or counted for me, or votes of any number of legal or qualified voters desiring, intending, and offering to vote for you were refused by the said judges of election at the said polls, as is in the said notice alleged.

Sixth. I deny that at the polls of the first precinct of the town of Evanstown, in said district, any number of illegal votes were received, counted, or returned for me by the judges of the said election precinct, as is in the said notice alleged.

And not waiving the foregoing denial, or any part of the same, but claiming and insist

ing that the same is a full and sufficient answer to each and all the charges in the said notice contained, for further answer, say:

First. That I received a majority of all the legal votes cast at said election, and that you did not receive a majority of said votes.

Second. That a large number of illegal votes, to wit, one hundred, were cast and counted for you in each and all of the precincts of said district by persons who were not legally entitled to vote in said precincts respectively.

Third. That a large number of persons, to wit, over one hundred, who temporarily were inmates of the poor-house in the town of Norwood Park, and who were not legal voters of said town, were allowed to cast their votes for you, which were counted and returned for you.

Fourth. I shall contend and insist that all illegal votes counted and returned for you shall be disregarded.

Fifth. That a large number of ballots, to wit, over one hundred, were by some person or persons to me unknown put into the ballot-box in the second precinct of the seventeenth ward of the city of Chicago, which were not cast by any one; and that said fraudulent and illegal ballots were counted and returned by the judges of said election precinct with the votes legally and properly cast at said election. And I do and shall insist that the entire vote returned for said precinct shall be disregarded, for the reason that the actual legal vote of said precinct cannot be ascertained.

Sixth. I shall show that the judges of election of the several precincts in said district were appointed by the party of which you were the nominee, and were favorable to your election; and shall insist that any omissions or irregularities on their part were to my prejudice and not prejudicial to you.

C. B. FARWELL.

The contestant in this case charges that in the first precinct of the twentieth ward there was a large number of illegal votes received and counted for contestee, which allegation the contestee in his answer denies. The one charges fraud, which the other denies, and upon this issue of fact a large amount of testimony has been taken by contestant. It appears from the record, that contestee received a majority of 171 votes in said precinct. The evidence taken upon this issue shows that a large number of persons named on the poll-lists, and voting from places therein named, did not reside in the precinct, or that the residences given were fictitious, or that the lots upon which they claimed to reside were vacant; and so conclusive is the testimony of fraud in the polling of illegal votes and fraud upon the part of the judges of election in said precinct in receiving and counting illegal votes, as well as in their management of the ballot-box after the closing of the polls, that there can be no difference of opinion upon the part of the committee of the necessity of disregarding the conclusions furnished in the returns of the said judges. The fraud in the precinct is admitted. The only question of difference is, as to the proper method of dealing therewith so as to relieve the injured party from its effects. We hold the law upon this point to be clear, that where fraud is shown to exist, the poll shall not be rejected unless it be impossible to purge it of the fraud. We do not believe such a state of facts exists in this case. We therefore hold that said poll should be purged of its fraudulent and illegal votes, while upon the other hand it is claimed by the friends of contestee that the whole vote of the precinct should be rejected. It is admitted that the true poll-list of this precinct is in evidence before this. The proof on the part of contestant shows that but a short time before the election a registry list was made out by four partisan friends of contestee, upon which some eight hundred names were placed, made up in part of the names of men who had formerly lived in said precinct but were then dead, and of others who had moved out of the precinct prior to the election, and lists of names appear from the proof to have been taken from this registry and used by the supporters of contestee, who were furnishing names to voters. The testimony conclusively shows that some persons voted four and fives times each; that others voted upon the

names of men then dead; others upon the names of men who had, previous to the election, moved out of the precinct; and in many instances the same name was used several times. One man offering to vote for contestant was refused because his name and residence had already been voted on. It cannot be said that explanation is to be found in a similarity of names, for in each case the residence of the voter was described by the number of the house and street, &c. This is true of every name on the poll-book. Under the law of Illinois no voter whose name is on the registry-list is required to make any affidavit unless challenged. The law also requires the judges of election to allow one challenger for each party in the room where the votes were received. The testimony shows that this was refused to the party of contestant, and that the *outside* challengers of the opposition (contestant's) party were threatened, assaulted, and driven off, the polls taken possession of and controlled by a set of ruffians, supporters of contestee, whose conduct and bearing deprived the election in that precinct of every semblance of fairness. The testimony taken by contestant shows that about three hundred of the names on the poll-book (a majority thereof being on the said registry-list), are not legal voters, for the reason that the places given as their residences were fictitious, they not residing there at all, or vacant lots or unoccupied buildings, or the names used belonged to men then dead or to others who had moved away; and this proof is generally made by the owners of the lots or buildings voted from, and old residents of, and thoroughly acquainted with, the locality.

The names and alleged residences of the voters are given by contestant in his testimony. The contestee is clearly precluded from questioning this proof, he having failed to call these men and prove their residences, as claimed. Of the whole number thus named by witnesses for contestant, there was but one called by contestee. The evidence of fraud in receiving and counting these illegal votes is irresistible. The question presents itself, "On whose behalf was this fraud committed?"

Presumption is raised against contestee, from the fact of his receiving a large majority in the precinct. It is also proven that one person who was furnishing names to illegal voters was providing them with tickets bearing contestee's name, and that the four men who made out the fraudulent registry, who, with one addition, constituted the judges and clerks of election, all voted for contestee. All the testimony proving illegal voting in this precinct is adduced by contestant. The contestee has called no witness nor made any attempt to show an illegal vote in the precinct, nor does he claim that there was any fraud practiced therein by contestant, but in his answer says that there was no illegal votes given for him in said precinct, and only asks to have the whole vote of the precinct thrown out, after the number of illegal votes proven by contestant to have been given to contestee exceeds his (contestee's) majority in the precinct. Contestee's majority in the precinct is 171. The number of illegal votes proven to have been given him in the precinct is 252, so that a rejection of the whole poll would give to contestee the advantage of the difference between these numbers, or 81 votes. "No man shall be allowed to take advantage of his own wrong," is one of the plainest and best settled of legal principles. The law says, "A wrongful or fraudulent act shall not be allowed to conduce to the advantage of the party who committed it." The old rule is, "At law fraud destroys rights. If I mix my corn with another's, he takes all." If contestee can have the whole vote of this precinct rejected because of the fraud perpetrated by his own supporters and in his own interest, as proven in the record and not denied, then he is rewarded to the extent of 81 votes for the perpe-

tration of said frauds. The proposition appears to be inequitable and illegal, bordering too closely upon absurdity to admit of argument.

By the law of elections it is held (American Law of Elections, sec. 304):

Nothing short of the impossibility of ascertaining for whom the majority of the votes were given ought to vacate an election.

Again, sec. 305, p. 231:

It is the first duty of the tribunal trying the contest to purge the poll of the illegal votes, if this can be done.

This rule is particularly applicable in a case where it is proven that illegal votes were *received and counted*, rather than in cases where from the proof of irregularities upon the part of the judges it was to be *presumed* that the count and returns were illegal. The method used in this election was such that had fairness and honesty been observed, the poll of this precinct could have been purged with certainty and without difficulty. Every voter's name was entered upon the poll-book as he voted. Opposite his name was written the street and number of his residence, as given by himself; also a poll-book number, and the testimony of the judges shows that the same number as that opposite his name on the poll-book was written on the ballot of every voter before it was put into the box, so that when proof is made that any name on the poll-book is fictitious, or not the name of a legal voter, it is only necessary to select the ballot bearing the corresponding number, and thus identify the candidate from whose vote the deduction should be made. In this case the proof shows that after the election was closed, the ballot-box was taken off by one of the judges to the house of a candidate on the same ticket with the contestee, and there left for two days before the official returns were made, and that the friends of contestee having charge thereof withheld their returns until the other precincts were heard from; that when said official returns were made the ballots were sealed and returned to the county clerk, and were not again opened until in taking the testimony in this case they were produced and opened in the presence of the parties to this contest or their attorneys and the officers taking the testimony. Then great irregularity appeared in the numbering of the ballots. *There were found* 183 *names on the poll-book for which no ballots were found*, 198 ballots of duplicate and triplicate numbers. There were only 673 names on the poll-book, but there are ballots numbered 674, 675, 675, 676, and 677. It is clear that the ballot-box had been tampered with, but it must be remembered that the box was in the custody of the friends and supporters of contestee, which raises the presumption that whatever alterations or changes were made were in his interest and to his advantage. It must be to the disadvantage of contestant to be forced to purge this poll of fraudulent or illegal votes, after the ballots had been thus manipulated by the friends and in the interest of contestee. In such a condition of things, would it be inequitable or unfair to hold that whenever an illegal vote was proven it should be charged to contestee, whether a ballot bearing a corresponding number was found for him or not? In the case of Duffey, 4th Brewster, p. 531, the court held, "Upon notice, &c., that fraudulent votes had been received, the burden of proof falls upon the candidate advantaged by the count, to show that the person so voting was a legal voter or voted for his opponent; otherwise it will be presumed that they were polled and counted for him, and the poll will be purged by striking the whole number of such votes from his count." This ruling was no doubt based upon the presumption that the party receiving the majority is responsible for the fraud, and upon which presumption the

court felt warranted in throwing the burden of proof on him, and thus purging the poll. But the application of this rule, which might be claimed to be stringent, is not asked or contended for in this case. Here it is only proposed to deduct from the returned vote of the contestee the number of illegal votes, with ballots bearing numbers corresponding to the names of the illegal voters proven to have been received by him in this precinct (there are 84 names in addition to these proven to be of illegal voters, for which there are no ballots, and we disregard them), and it is held that the adoption of this method for the purging of said poll will necessitate the deduction of 252 votes from the returned votes of contestee. Other evidences and proofs of fraud in this precinct might be cited, such as the purloining of the poll-book from the possession of the county clerk, &c. The fact that the returned majority for contestee will be overcome, and the contest probably determined between the parties, should the conclusions herein set forth be concurred in, must be accepted as the explanation for dwelling at such length upon questions involved in the poll of this precinct.

*Second precinct, twentieth ward.*—Costestant claims to have proven 12 illegal votes to have been received and counted for contestee in the second precinct of the twentieth ward; 10 are admitted upon the other side, which latter number is allowed him.

*Fifth precinct of the twentieth ward.*—In the fifth precinct of the twentieth ward contestestant has proven 3 illegal votes for contestee, which are admitted upon the other side, and which we allow him.

*Third precinct of eighteenth ward.*—In the third precinct of the eighteenth ward it clearly appears from the testimony that after the election had closed, the ballot-box, together with the ballots and all the papers pertaining to the election, were left open over night in a drinking-saloon, in charge of no one, unless it was the keeper of said saloon, who is shown by the poll-book to have been a supporter of contestee's, and who was not an officer of election in said precinct nor authorized to take charge of said ballot-box under the law. Further, it is shown by the testimony that on the day after the election some of the officers thereof, together with several other unauthorized persons, went to the said saloon, took charge of the ballot-box and ballots, and made a count thereof, whereupon what was claimed to be an official return of the election in said precinct was made, either by some of the officers present or by their unauthorized assistants, showing a majority in said precinct of 14 votes for contestee. It is shown by the testimony of one witness that the said majority of 14 votes for contestee was stated to him on the night of the day of election by some of the officers, after a count of the ballots had been had by them, and that he reported the same to police headquarters that night; but it clearly appears that said officers did not regard the count had or report given thereon, upon the night of election, either as final or official, as no record or memoranda thereof was made; and upon the following day they proceed to the canvass of the said poll as stated above, and from such count made out that which purports to be the official returns of the election in said precinct. Under these circumstances, although it does not change the result, we feel constrained to regard the returns from this the third precinct in the eighteenth ward as wanting in regularity and certainty, and think they should be rejected.

*Fourth precinct of eighteenth ward.*—In this precinct contestee objects to a number of affidavits furnished by non-registered voters, because of their not being signed by the affiants, though properly certified to by the officer taking the same. We hold that said affidavits are clearly sufficient. In this precinct contestant objects to 7 affidavits furnished by

voters for contestee, upon the ground that they do not appear to have been sworn to before any officer. There is no jurat thereto; it is agreed that the same are fatally defective, and 6 votes therefore should be deducted from contestee. In this precinct it is proven by Hirsch (witness for contestee) that 13 votes therein given to contestee were from vacant lots or persons residing out of the precinct; that number should be deducted from contestee. In this precinct contestee claims to have proven 10 illegal votes for contestant, because of non-residence, while it is not clear that more than 6 are so proven in the record; we therefore deduct from contestant that number, viz, 6.

PAUPERS.

*Norwood Park.*—At this precinct the contestee received 51 and contestant 94 votes.

The contestee, in his answer, charges:

Third. That a large number of illegal votes, to wit, over one hundred, who temporarily were inmates of the poor-house in the town of Norwood Park, and who were not legal voters of said town, were allowed to cast their votes for you, which were counted and returned for you.

This charge is very vague and uncertain, and leaves the reader in ignorance of any other objection to these votes than the simple fact that they are paupers. But as the law of Illinois allows paupers to vote, it is evident that the objection, as disclosed by the testimony and the brief of the contestee, is to the *residence* of these supposed paupers. On this subject the contestee examined a number of witnesses, whose testimony is too voluminous for this report, and reference is hereby made to the printed record for the same. It will be seen the contestee seeks to show that about 60 voters from the Cook County farm—the poor-house—were paupers, and that the last residence of these alleged paupers before they entered the poor-house was in districts outside of Norwood Park, the voting precinct. For this purpose he resorts to negative evidence; that is, he does not seek to prove the residence of each voter, but introduces witnesses to prove that no such persons, to their knowledge, lived in said precinct. As many as six witnesses are examined on these points. Why resort to all this trouble, expense, and uncertain testimony, when, if they had been paupers, the record evidence would have stared him in the face? The Illinois statute says:

The keeper of the poor-house shall keep an account showing the name of each person admitted to the county poor-house, the time of his admission, the place of his birth, and shall each year file with the county clerk of his county a *copy of the same.*

So that if these voters from the Cook County farm had been paupers, the record evidence, from necessity, was right at hand to prove it. It could not have been forgotten; for the line of examination of Kimberly by contestee's counsel went to the point of the rolls, but failed to go farther. He was asked for his pay-rolls. He was asked to describe the receiving-house, and he answers:

When paupers come there, they are taken to this man in this house, who keeps my books and has charge of the wards; who *enters their names*, and are sent from there to the different wards.

Why not at that point have asked for the production of the list of paupers' names thus entered at the receiving-house? Surely it was not forgotten when attention was thus directed to the fact that rolls were kept.

*Revised statute of Illinois*, 1874, *chapter* 46, *section* 65.

Every person having resided in this State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, who was an elector in this

State on the 1st day of April, A. D. 1848, or obtained a certificate of naturalization before any court of record of this State prior to the first day of January, in the year of our Lord 1870, or who shall be a male citizen of the United States, above the age of 21 years, shall be entitled to vote at such election.

See const., art. 7, sec. 1.

SEC. 66. *A permanent abode is necessary to constitute a residence within the meaning of the preceding section.*

SEC. 67. Whenever at any election any person offering to vote is not personally known to the judges of election to have the qualifications mentioned in the two preceding sections, if his vote is challenged by a legal voter at such election, he shall make oath and subscribe an affidavit in the following form, which shall be retained by the judges of election, and returned by them with the poll-books:

STATE OF ILLINOIS,
*County of Cook, ss:*

I do solemnly swear that I am a citizen of the United States; that I have resided in this State one year, in this county ninety days, and in this election-district thirty days next preceding this election, and that I have not voted at this election. (Formal parts omitted.)
Subscribed, &c.

SEC. 68. In addition to such an affidavit, the person so challenged shall produce a witness personally known to the judges of election, and resident in the precinct, or who shall be proved by some legal voter of such precinct, known to the judges to be such, who shall take the following oath:

"I do solemnly swear that I am a resident of this ———, and entitled to vote at this election, and that I have been a resident herein for one year last past, and am well acquainted with the person whose vote is now offered, and that he is an *actual* and *bona-fide* resident of this election-precinct and has resided herein thirty days, and, as I verily believe, in this county ninety days, and in this State one year next preceding this election."

It will thus be seen that no man in Illinois can vote who is challenged until he takes the oath prescribed by section 67, and also prove by a legal voter, under section 68, the truth of all that the voter has sworn. This being done, it is the duty of the election-officers to record his vote. In this precinct all these precautions were observed, and the affidavits of the voters and the witnesses are duly filed and returned.

No fraud being proved, or attempted to be proved, in the officers who received the votes, the question recurs, what degree of proof, as to the illegality of these voters, ought to obtain to justify this committee in excluding votes thus received, counted, and duly certified?

In the celebrated New Jersey cases, 1st Bart., page 25, the committee say:

It is not sufficient that there should exist a doubt as to whether the vote is lawful or not, but conviction of its illegality should be reached to the exclusion of all reasonable doubt before the committee are authorized to deduct it from the party for whom it was received at the polls.

In Rogers's Law and Practice of Election Committees, page 116, it is said:

So in petitions against candidates on the ground of want of sufficient qualification, although a negative is to be proved, it is the usage of Parliament that the party attacking the qualification is bound to disprove it.

So run all the authorities, that a vote once legally cast cannot be set aside except upon proof so strong as to produce the certain moral conviction that the said vote was illegal. The burden of proof is on the party assailing the vote. See Cessna *vs.* Myers (McCreary, page 426), wherein Judge Hoar, in behalf of the committee, says, "The burthen of proof, when either party insists that a vote should be deducted from those cast and returned for his competitor, is upon that party to show the person whose vote is in question voted, and that he voted for his competitor, and that he lacked some one of the qualifications to constitute him a voter."

Admit, for the argument, that the law of Illinois disqualifies paupers *from* voting in that State, is the testimony in this case sufficient to

satisfy the judgment that those "employés," as they were called, were paupers? We think not, though, secondarily, the weight of evidence is that they were a class employed by the superintendent of the poor-house by order of the board to do work upon the county farm and about the premises, and to receive their clothing and food as a compensation. We know the human heart revolts at being called a pauper, and that there are many, many poor persons in every county who would gladly work the remainder of their days for their food and clothing rather than be called paupers. To this class, it seems to your committee, these voters belong. Therefore, in the light of the authorities and the evidence, your committee could not strike off these votes, even if the law prohibited paupers from voting. But the law of Illinois does allow paupers to vote, and the contestee attacks, in his evidence and the brief of his very learned and able counsel, the

RESIDENCE

of these parties. This brings us to consider the law of residence within the meaning of the constitution of Illinois so as to allow the exercise of the election-franchise.

No question has been more discussed and to less purpose than the definitions of "residence" and "domicile." No two authors precisely agree in their attempt to define them. But all agree upon the universal principle that every man must have a domicile. We can well understand why a strict rule should apply in the definitions of these terms, as has ever been and will be, in regard to domicile where the rights of property, the law of descent and distribution, the law of the duty of the citizen or the subject to his government, are involved. We can as readily see, in regard to suffrage, why the strictness of the rule should not apply in our government. While the extent to which suffrage may be carried is under the control of the law power of the several States, conferred by their constitutions, yet suffrage in some form is inherent in our government and forms its very basis. Without the free and legitimate exercise of this right, we can have no republican government; and all laws passed by the States requiring its exercise in particular localities, and requiring a residence, are not to abridge the sacred right, but to guard and protect it from abuse and violation.

As we said above, this question of residence has been much discussed. Vattel defines domicile to be "a fixed residence in any place with an intent of always staying there." Judge Story says:

> In a strict and legal sense that is properly the domicile of a person where he has fixed his true permanent home and establishment, and to which, whenever he is absent, he has the intention of returning.

Chief Justice Shaw, 5 Pick., 234:

> It is difficult to give an exact definition of habitancy. * * * It is manifest, therefore that it embraces the fact of residence at a place with the intent to regard it his home.

In the late edition of American Cyclopedia we find domicile defined to be—

> The place where by law a man is deemed to reside. There has been much confusion and conflict of opinion as to what shall constitute a man's domicile, which is not necessarily the same as his residence. The term residence has no other meaning than actual residence and engagement in business, which it will be seen does not *per se* constitute a domicile in respect to other legal incidents.

Bouvier says:

> But it is to be observed that circumstances which ought to be held sufficient to establish a commercial domicile in time of war, and a matrimonial domicile, or forensic or political dom-

icile in time of peace, might not be such as would establish a principal or testamentary domicile, for there is a wide difference in applying the law of domicile to contracts and wills. (Phill. on Dom., 11 Pick., 410; 10 Mass., 488; 4 Wash. C. C. R., 514.)

There is a wide difference between a man's residence and his domicile. He may have a domicile in Philadelphia, and still he may have a residence in New York. (Robts. Ecc. R., 75.)

A resident is a person coming to a place with the intention of establishing his domicile or permanent residence there, and who in consequence actually remains there.

We will now review all the cases referred to, and which we have found directly involving the right of paupers to vote in the township or election-precinct to which they were removed, and whether or not they acquire a residence therein within the meaning of the election laws.

The first case which came before the House involving this question is Monroe *vs.* Jackson (1st Bart., 98), from New York. The contestant alleged that 163 paupers and upward from the almshouse and hospital in the eighteenth ward voted at the third election-district of said eighteenth ward for the sitting member, which paupers had not been admitted to said almshouse from the said third district of the eighteenth ward, and that 9 others of said paupers voted in the second district of the twelfth ward who did not reside in said district before they were admitted to the poor-house.

The committee, a majority, in their report, say:

The first question to which the committee think it necessary to turn their attention is that which arises under the law of New York, as to the right of inmates of almshouses and hospitals to vote. The law provides that no person shall be deemed to *have lost* or *acquired a residence* * * * by being in a *poor-house*, *almshouse*, *hospital*, or *asylum*, in which he shall be maintained at the public expense. The plain meaning is, that he neither loses the residence he had before he went there nor acquires a new one by going there. He votes, therefore, upon his former residence—that is, in the district or ward where he lived before he became an inmate of the almshouse.

The minority of the committee reported the right of these paupers to vote, and denied the right of the legislature of New York to pass a law saying they could not acquire a residence at the poor-house. The committee deducted the pauper vote which elected the contesteant by 14 votes, and offered the usual resolutions to unseat the sitting member and seat the contestant. The minority reported in favor of counting pauper vote, and in favor of the sitting member. The House, composed of a majority of the political friends of the contestant, declared, by a vote of 104 to 91, the seat vacant, and referred the question back to the people. This case certainly does not strengthen the pretension of the sitting member, for, it will be observed, there the law of the State expressly provided that paupers *should not acquire a residence* in the almshouse, and in the face of that the House would go no further than to so far doubt as to express no opinion, and refer the whole question back to the people. The *State of Illinois has no such law.* The legislature of New York must have been of the opinion that paupers could acquire a residence at a poor-house, or there would have been no necessity to pass a law to prevent it. The weight of this case, aside from the New York statute, is clearly in favor of the right of paupers to vote at the poor-house precinct.

The next case is that of Covode *vs.* Foster (2d Bart., 600). In that case the House met the question fully and decided that paupers acquired no residence at the poor-house, and that they could not vote out of the district from which they went.

Then comes Taylor *vs.* Reading (2 Bart., 661). Both of these last cases were from the State of Pennsylvania. In the latter only three votes were claimed by contestant as paupers voting out of their precinct. Under the influence of the decision of Covode *vs.* Foster, the counsel

for the sitting member admitted the three pauper votes to be bad, so that the question of the right of paupers to vote was not really before the committee, and was not passed on by the House. As authority, it is only of the value of the admission of the attorney, and no more. But before this case was reported to the House a contest arose in the senate of Pennsylvania involving the same question which had been involved in this case. Mr. Randall, from the minority of that committee, says, in his report:

Although those votes (the three pauper votes) were admitted as against the sitting member in his brief, yet at the time of that admission the conclusive opinion of the Hon. B. H. Brewster, late attorney-general of Pennsylvania, had not been promulgated. On the adjudication of said case, the opinion of Mr. Brewster was accepted as determining the legality of this class of votes, and the votes were retained as legal.

As the two last cases referred to were construed by the law of Pennsylvania, we deem it proper to give to the House in full this able opinion. It was delivered in the case of Scull against Findley. Findley was the returned member. He held his seat by virtue of a poor-house vote, which voters had been sent there from other districts.

Ex-Attorney Brewster on the Findley-Scull case:

Third. Is a poor man (pauper in a county poor-house) a qualified elector in the poor-house election-district, although said poor man (pauper) had been sent there from another election-district, provided he is a white freeman, a citizen of the United States, and has resided in this State at least one year, and in the election-district where he offers to vote at least ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, and has been registered?

Answer. Such a person is a qualified elector and can vote, and his vote cast is a lawful vote, and as good as any man's vote, and it ought to be so. The Constitution establishes this, and it does not disqualify him because he is poor. That does not deprive him of his freedom or his citizenship.

They are amenable to the law, and being so, upon the very fundamental principles of our government have a right to be represented and to say who shall make the laws. It is not property or poverty that rules here. It is the man, responsible to God, and responsible to the law. To say otherwise, would make poverty worse than a crime. The pauper is bound by every law upon the statute-book, and is protected by every provision of the constitution, as much so as the wealthiest, wisest, or most successful man in the community. Sickness, the calamities and accidents of life, may reduce men to this sad condition. That is bad enough. The law never intended to add to his miseries by making him the only slave that remains in our republic. All the duties of life bind him; he can make a contract; he can be obliged to testify; he can marry; he can sue and be sued; he is only restrained and bound by rules as every one is who lives in any institution. Persons in hospitals, asylums, factories, homes for disabled soldiers, public works, government shops, and all kinds of public and eleemosynary institutions, as well as private establishments, are bound by fixed rules, that are enacted for the preservation of good order, to maintain discipline, and carry out the purposes of the establishments This is all that he is subjected to, and these rules and the restraints of the house he can relieve himself from at any moment by asking for his discharge. The poor-house is his residence; it would be there that process of law, criminal or civil, would be served upon him; and it is from that residence he may vote, provided he has lived there ten days preceding the election and conformed to the requirements of the law. If to receive public support would be legal cause of disqualification, we must not forget that even now a large number of white and black citizens of the southern portion of this nation are still receiving and levying upon the supplied bounty of the government. What would be their condition? For some of those who have received, and still receive, that bounty were once the wealthiest and best bred, and the most accomplished, and sometimes reputed the wisest, people in this region. By the calamities of war they are reduced to want; but God forbid that they, or any one, should by any calamity be stripped of their right of manhood, and brutalized down to that slavery from which we have been, by God's providence, all emancipated.

I am, respectfully,

BENJAMIN HARRIS BREWSTER.

The case of Scull *vs.* Findley was referred to a committee, a majority of whom were his (Scull's) political friends, and a majority of the committee reported in favor of counting the pauper vote and of their right

to vote. The senate, composed of a majority of the contestant's political party, sustained that report, and confirmed their political opponent in his seat against their friend; thus giving the opinion of the highest political body in Pennsylvania upon the true construction of their own laws. This case would certainly balance, if not outweigh, Covode *vs.* Foster.

Next, and last, is the case of Cessna *vs.* Myers. This, too, was from Pennsylvania, and involved the right of paupers to vote in the precinct of the poor-house, though they had gone there from other districts. In this case the committee unanimously decided the *residence* of the pauper was the *poor-house*, and that he had a right *to vote there* regardless of the district from which he had gone. True, the committee say it is unnecessary to decide the question, yet they virtually do by refusing to strike off the pauper vote and by the expression of the opinion that the paupers had a right to vote. The following is what Judge Hoar says in behalf of the committee in that case:

The case of the paupers presents greater difficulty. Under the laws of Pennsylvania it is conceded they may be entitled to vote. In several contested-election cases cited by the contestant, it is stated by the committee that in the absence of statute regulations on the subject, a pauper abiding in a public almshouse, locally situated in a different district from that where he dwells when he becomes a pauper, and by which he is supported, away from his original home, does not thereby change his residence, but is held constructively to remain at his old home.

Monroe *vs.* Jackson, 2 Elect. Cas., 98.

Covode *vs.* Foster, Forty-first Congress.

Taylor *vs.* Reading, Forty-first Congress.

And there are some strong reasons for this opinion. The pauper is under a species of confinement. He must submit to regulations imposed by others, and the place of his abode may be changed without his consent. Having few of the other elements which ordinarily make up a domicile, the element of choice also, in his case, almost wholly disappears. There are also serious reasons of expediency against permitting a class of persons who are necessarily so dependent upon the will of one public officer to vote in a town or district in whose concerns they have no interest. On the other hand, the pauper's right to vote is recognized by law. It can practically very seldom be exercised except in the near neighborhood of the almshouse. In the case of a person so poor and helpless as to expect to be a life-long inmate of the poor-house, it is, in every sense in which the word can be used, really and truly his residence—his home. And it is important that these constitutional provisions as to suffrage should be carried out in their simplest and most natural sense, without the introduction of artificial or technical constructions. It will, however, be unnecessary to determine this question, as will hereafter appear.

The result of these authorities is simply this: Monroe *vs.* Jackson decides nothing. Covode *vs.* Foster decides *squarely* that paupers acquire no residence at a poor-house, and therefore cannot vote in the district of the poor-house, unless they were residents therein before they went there.

Scull *vs.* Findley, Pennsylvania senate, decides just the *opposite*, and that decision was rendered in favor of a political opponent, thus giving to it a much greater moral weight.

Cessna against Meyers. The committee do not ask the House to decide the question, but Judge Hoar in their behalf expresses the unanimous opinion of the committee, wherein he says:

In the case of a person so poor and helpless as to expect to be a life-long inmate of a poor-house, it is, in *every sense* in which the word can be used, *really and truly his residence—his home.* And it is *important* that these *constitutional provisions* as to suffrage should be carried out in their simplest and most natural sense, without the introduction of *artificial* or *technical constructions.*

Upon this brief summary of these cases, it is evident that the weight of authority is to the point that paupers at a poor-house do acquire there a *residence* within the meaning of the election-laws prescribing a *residence* as a requisite to suffrage.

We are referred to 29 Illinois, Paine *vs.* The Town of Durham, page 125; Freeport *vs.* Supervisors, 41st Ill., page 41. They do decide, under the pauper-law of Illinois, paupers do not lose their residence in the towns from which they went, nor do they acquire a residence at the poor-house. The mode of supporting the poor of the State is purely within the control of the legislature, and it may prescribe any regulations consistent with humanity and not repugnant to public policy, which to it may seem wise and just. The law of Illinois allows each town to take care of its poor in their respective townships, or there may be a county poor house, which becomes a receptacle of the poor of all the county not otherwise provided for. If, under this police law, paupers could acquire a residence within the meaning of that law, then the town in which the poor-house is would become responsible for all the paupers of the county, and the other towns go free from any contribution. The cases referred to involved these questions as to the liability for the support of paupers under the statute-law of Illinois, and we think the decisions in these cases were eminently wise. In regard to paupers, the legislature, as it had a right to do, defines what shall be considered a pauper's residence. Section 17, ch. 107, says:

The term "residence" mentioned in this act (the pauper act) shall be taken and considered to mean the actual residence of the party, or the place where he was employed; or in case he was in no employment, then it shall be considered and held to be the place where he made it his home.

The law thus defines where the pauper's residence shall be, so as to attach liability of counties and towns for his support. It was in the intent of these laws those decisions were had, and they have no reference or bearing upon the constitutional provision in regard to suffrage. It would, indeed, be a dangerous precedent to allow the decisions of the courts, upon mere matters of police, changeable at the will of the legislature, to control the fundamental right of suffrage guaranteed by the constitution of the State and beyond the reach of the legislature. If so, then the next legislature may change the terms to constitute residence under the pauper-law, and of course the courts would respect and follow that change. Hence we would have suffrage expanding and contracting at the will of the legislature and the courts, in the face of the constitution, which makes it uniform *for all time* and *for all places.* Therefore we are of opinion that the decisions of the supreme court of Illinois, in construing their police-laws, have no bearing on the right of persons to vote, and that we must decide this question on entirely different grounds.

Section 1, article 7, Illinois constitution, fixes the qualification of suffrage thus:

Every person *having resided* in this State one year, in the county ninety days, and the election district thirty days (see previous page), shall be entitled to vote.

Then the legislature, section 66, chapter 46, says:

A permanent abode is necessary to constitute a residence within the meaning of the preceding section.

Certainly it will not be contended that the legislature had a right to change the constitution, or so to construe it as to enlarge or restrict the right of voting. It can do neither, and their act on the subject of residence is null and void; and we must decide this question as if it had never passed, and look alone to the constitution for our guide. By that constitution we find "every person *having resided,*" &c. This is certainly putting the question of residence in its *mildest* form, and rebuts the presumption that the constitution means that a man, before he can vote

in Illinois, must have a *domicile* in the sense of the old and strict construction of that word when applied to *contracts, distribution*, &c. In the opinion of your committee, "having resided" simply means that a man shall, in good faith, have lived in Illinois for twelve months, not as a mere itinerant or visitor, but that he shall have been substantially engaged in business there during that time. Give the construction contended for by contestee, then there is a very large class in that State, who do not dwell in poor-houses, who would be disfranchised. The law of Illinois is rather singular in this. It requires the relatives of a poor person, if they are able, first to support them, in the following order: First, children shall support their parents; next, parents support their children; next, brothers and sisters; next, grandchildren; next, grandparents. And it is made the duty of the State's attorney for the county to apply to the court for judgment and award of execution against such relative for the support of his pauper kinsman; for the statute recognizes all persons as paupers who are not able to support themselves. Will it be contended that these poor persons, living in the family of their relatives, do not acquire a *home*, a *residence* there, because they are placed there in obedience to the law? Surely not. If so, we would witness the painful spectacle of disabled soldiers and some of the most intelligent citizens disfranchised because of poverty and because they live in the family of their relatives, away from the town in which they had previously lived. This is as much their poor-house, under the law, as the county building is the poor-house of those who have no relatives within the degree able to support them. If the home of the family in which he lives is not his, then he has none—no home on earth. So with the pauper at the poor-house. It is *his home, his residence; he has none other*. It is idle to say his residence is a restrained one. It is not. He can leave when he pleases. He is there for no offense; paying the penalty of no violated law. His only crime is poverty, and he is there to receive the bounty of his county or his town, as the most convenient place. It is a necessity that compels him to go there, but it is not the necessity of *duress* which deprives him of his volition and his *intent*. Unlike the lunatic, the infant, and *feme covert*, he is a free agent, to think and act for himself, except so far as he is restrained by poverty. The humblest citizen in his little hut, living perhaps on one meal a day, is *restrained by poverty*, yet he is a *freeman* and *a voter*. That necessity which compelled them to go to the poor-house will compel them to remain; and if there be one class above another whose *homes, whose residences* are *fixed*, it is this class of persons. We presume but few go *animo revertendi*, but they go with the expectation of spending the remainder of their days there. Then admitting these persons to be paupers—which we do not—in the opinion of this committee, *their home, their residence*, their *permanent abiding-place* is at *the poor-house*, and they have a right to vote in the Norwood Park precinct, in which the poor-house is.

We therefore present the following as the summary of the vote of the district, corrected as before stated, which will be as follows:

| | |
|---|---|
| Illegal votes for the contestee rejected in the— | |
| First precinct, twentieth ward | 252 |
| Second precinct, twentieth ward | 10 |
| Fifth precinct, twentieth ward | 3 |
| Fourth precinct, eighteenth ward | 13 |
| Defective affidavits (no jurats)— | |
| Third precinct, eighteenth ward | 6 |

| | | |
|---|---|---|
| Returned majority for contestee— | | |
| Third precinct, eighteenth ward | | 14 |
| Total gain for contestant | | 298 |
| Returned majority for contestee in the whole district | 186 | |
| Illegal votes for contestant rejected in the fourth precinct of the eighteenth ward | 6 | |
| | | 192 |
| Leaving a majority of | | 106 |

of the legal votes in said third Congressional district of Illinois for the contestant.

The committee, therefore, agree to present the following resolutions, to wit:

*Resolved*, That Charles B. Farwell was not elected, and is not entitled to a seat in this House as a member of the Forty-fourth Congress from the third Congressional district of Illinois.

*Resolved*, That John V. Le Moyne was elected, and is entitled to a seat in this House as a member of the Forty-fourth Congress from the third Congressional district of Illinois.

JOHN T. HARRIS.
JO. C. S. BLACKBURN.
R. A. DE BOLT.
E. F. POPPLETON.
G. M. BEEBE.

We concur in the result reached by the report of a majority of the committee, to wit, that Le Moyne was elected and that Farwell was not. But we cannot concur in that portion of the report which seeks to purge the poll at precinct No. 1 in Twentieth ward of Chicago. The conduct of the officers of election having been shown to be grossly fraudulent, and the integrity of their returns at this poll having been thereby destroyed, and the proof having shown, also, that the ballots in the box had been tampered with, we can come to no other conclusion than to reject the entire vote at this precinct, except in so far as contestant and contestee have established by proof *aliunde* the number of votes they received at this poll respectively.

JNO. F. HOUSE.
CHARLES P. THOMPSON.

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VIEWS OF THE MINORITY.

Mr. William R. Brown, from the Committee of Elections, submitted the following as the views of the minority:

*To the honorable the House of Representatives of the United States:*

The undersigned, a minority of the Committee of Elections, in the case of J. V. Le Moyne, contesting the seat now held by Hon. C. B. Farwell, of the State of Illinois, respectfully report: That the district consists of a portion of the county of Cook and the county of Lake, and that the official returns elect Mr. Farwell by a majority of one hundred and eighty-six, which the contestant claims to overcome by proof of illegal votes and fraudulent practices to his prejudice sufficient to change the result. His charges as made in his notice of contest are somewhat uncertain, but as developed by his argument and the evidence go to the following extent: Illegal votes for Mr. Farwell in the first precinct of the

twentieth ward, three hundred and seventeen; in the fourth precinct of the eighteenth ward, thirteen; in the second precinct of the twentieth ward, twelve; in the fifth precinct of the twentieth ward, three. Also, that seven unregistered persons voted for Mr. Farwell in the fourth precinct of the eighteenth ward who failed to make the requisite affidavits, no officer having signed the jurats. That the entire returns of the third precinct of the eighteenth ward, which gave Mr. Farwell a majority of fourteen, be excluded because the ballot-box was left unprotected in a grocery-store prior to the time the official count was made.

The sitting member on his part claims that ten illegal votes were cast for Mr. Le Moyne in the fourth precinct of the eighteenth ward; and that forty-one unregistered persons voted at the same precinct without signing the affidavits required by law, and that fifty-nine illegal votes were cast for Mr. Le Moyne by paupers at the Norwood Park precinct.

The evidence in the case fully proves that in the second precinct of the twentieth ward Mr. Farwell received ten illegal votes; that in the fourth precinct of the eighteenth ward Mr. Farwell received twelve, and Mr. Le Moyne eleven; that in the same precinct five persons, M. Ryder, McNary, McInerney, Smith, and McCarty, whose affidavits had no signatures of officers to the jurats, voted for Mr. Farwell, and that John Weber and John Duffy, under similar circumstances, voted for Mr. Le Moyne. There is no ballot numbered 316, the number on the poll-list opposite the name of Bernhard Burns, and the name Rasmus H. Hanson does not appear on the poll-list. In the fifth precinct of twentieth ward three illegal votes were cast for Mr. Farwell. We agree with the majority of the committee in reference to the unsigned jurats, holding them clearly sufficient. And the only questions left for us to consider are, the disposition to be made of the first precinct, twentieth ward, the third precinct of the eighteenth, and Norwood Park.

FIRST PRECINCT, TWENTIETH WARD.

In reference to this precinct the committee are all agreed that the election was thoroughly corrupt; that an organized effort was made to commit fraud, commencing with a false registration-list and ending in the polling of hundreds of illegal votes. Unless these votes can be eliminated and the poll purged, we must reject the entire returns, as the number of fraudulent votes cast was clearly sufficient to change the majority. We clearly recognize the duty to follow the rule, that the exclusion of an entire poll is the very last resort, and that it must never be done where there is any rational means by which the illegal votes can be eliminated and we be enabled to arrive at the truth. In this case no such means exists. The evidence clearly shows not only fraud, but that the judges of the election were parties to it, that they were corrupt and dishonest, and so conducted the election that frauds might be and were committed. They would not respect challenges nor allow challengers in the room; they numbered the ballots so that no one can tell who cast them, although under the Illinois law it was their duty to place on the ballot cast by each voter a number corresponding to that opposite his name on the poll-list; and when the ballots were produced from the clerk's office, it was found not only that the ballots were not so numbered, but that on a count there was a discrepancy of forty-eight against Farwell between the returns of the officers and a count of the ballots. These facts destroy the *prima facie* character of the returns, the judges are impeached, and their returns become as blank paper.

Mr. McCrary, in the American Law of Elections, section 442, states the rule as follows:

It is sometimes a difficult matter to decide whether misconduct on the part of election-officers is to be regarded as constituting fraud or as only the result of carelessness, ignorance, or negligence. If, however, such misconduct has the effect to destroy the integrity of the returns, and avoid the *prima facie* character which they ought to bear, such returns will be rejected and other proof demanded of each vote relied on. And this is the rule concerning such misconduct, whether it be shown to have been fraudulent, that is to say, prompted by a corrupt purpose, or whether it arise from a reckless disregard of the law or from ignorance of its requirements.

Returns which are impeached are good for no purpose whatever; they prove nothing; and to us the result seems inevitable that if it is admitted, as it is by every member of the committee, that the judges of the election were corrupt and the election fraudulent, that then the whole of the return becomes valueless, does not import verity, and can be used for no purpose whatsoever. The rule of the law, *falsus in uno falsus in omnibus*, applies and we have no middle course except to admit all or reject all; and we shall not attempt to argue the absurdity of taking ballots from the same source, numbered by the same hands, and which are proved to be numbered wrongfully, and from these numbers and ballots determine who the illegal voters cast their ballots for. The rule is a safe one; no one is injured by it; it deprives no one of a single legal vote; for when returns are excluded, it is always in the power of the candidate who believes he has a majority of the legal votes to call the voters and prove whom they cast their ballots for.

Rejecting the returns and going to the evidence, we find that Mr. Le Moyne, during the first forty days he took testimony, proved sixteen legal votes, and Mr. Farwell proved, while taking his testimony, three, which we allow to each party.

The eleven votes proved for Mr. LeMoyne during the last ten days of taking testimony we do not allow, as not being properly in rebuttal. The statute provides that during these ten days the contestant may take evidence in rebuttal only. During the first forty days he offered evidence attacking this poll; he proved that the officers were corrupt, and successfully impeached their returns. If, having done this, he desired any further advantage, it was his privilege to call the voters and prove how they voted. This he did to the extent of sixteen votes. The sitting member then had a chance to meet the testimony by proof of legal votes for himself, but did so only incidentally and to the extent of three votes only; and here, in our opinion, the case must rest, except that the contestant may disprove the facts attempted to be proved by contestee, but he cannot, when the mouth of the contestee is closed, produce new facts and other votes for himself. That certainly is beyond the intent and language of the statute.

In reference to the third precinct of the eighteenth ward, we do not believe the evidence will warrant the rejection of the entire returns. The evidence shows that, on the night of the election, the votes were counted and the result announced, but the official returns were not made till the next day. That night the ballot-box was left in a saloon unprotected, the ballots in it strung but the box not sealed. Clifford, clerk of the election, testifies that after the count was made, the night of the election, the result was announced and the result sent to police headquarters, and that he thinks the official result on Congressman agreed with the count made the night of the election. Mr. Fisher testifies he took the returns that night to the police headquarters. While the leaving of the ballot-box that night was culpable negligence, which, if the ballots had not been counted the night before, would have been

sufficient to have based the rejection of the poll upon, yet when we have the positive evidence of Clifford that the ballots were counted that night, the evidence that he thinks there was no discrepancy on the Congressional count, the evidence that Fisher took the returns to headquarters, the universal custom of daily papers in cities to publish election-returns the morning after election, and the ease with which contestant could have shown a discrepancy, if any had existed, fully, in our opinion, rebuts the presumption of tampering with the box during the time it was exposed, and leads us to believe the returns should be considered.

NORWOOD PARK.

In this precinct the sitting member claims that a large number of illegal votes were cast for contestant by paupers at the Cook County poor-farm, situated in the precinct. As our determination of this question settles this case, it deserves careful consideration. The evidence establishes beyond a question that the poor-form is situated in this precinct, and that a large number of persons were kept there—probably one thousand. On election-day, in 1874, fifty-four unregistered persons voted at this precinct, who gave their residence in their affidavits at Cook County farm, and four at the insane asylum, making, in all, fifty-eight. "These persons were carried to the voting-place in the poor-farm ambulance and in wagons, were a hard-looking crowd, a good many appearing to be too old and infirm to be workingmen; some were lame and one blind; they certainly were not farmers at Norwood Park." None of the witnesses recognized any of them as residents of Norwood Park, though the witnesses called were old residents and officials in the town, and men who, from their position, must have known who were residents there. This evidence, to be sure, is negative, but we submit that under the circumstances no evidence could be stronger. Norwood Park is a small country precinct, casting outside the poor-farm only eighty-four votes. In such a precinct every man knows and is acquainted with his neighbor, and especially is this true of the officers and business men in such a place; and when these come up and testify that they do not know these men, and have never known them there, the evidence seems to us very conclusive. In speaking of this class of testimony Mr. McCray says, American Law of Elections, section 356:

This kind of evidence is admissible for what it is worth, but it is manifest its value must depend upon circumstances. If the district or territory within which the voter resides is large or very populous, and the witness has not an intimate and extensive acquaintance with the inhabitants, the evidence will be of little value, and, standing alone, will avoil nothing. But on the other hand, if such district or territory be not large or populous, and if the witness shows his acquaintance with the inhabitants is such that he could scarcely fail to know any person who may have resided therein long enough to become a voter, his evidence may be quite satisfactory, especially if it further appears that soon after the election the alleged non-resident voter could not be found in the district within the limits of which all voters must reside. Proof of this character must at least be regarded sufficient to shift the burden upon the party claiming that the vote of such alleged non-resident be counted and require him to show affirmatively that he is a *bona fide* resident.

The evidence in this case of Winship, justice of the peace; Corse, town clerk; Pennoyer, an old resident of ten years; Ball, who had lived in the town since it was organized and had been through it three times within two years in assessing and collecting taxes, and of Stockwell, certainly is sufficient to change the burden of proof and throw upon Mr. Le Moyne the duty of showing such prior residence. But instead of attempting this, Mr. Kimberly, the warden of the poor-farm and Mr. Le Moyne's only witness, directly testifies that he does not know that these men had been residents of Norwood Park, and if corroborative evidence

was necessary that they had no residence in the town except at the poor-farm it is found in the fact that John Walsh, deputy warden of the poor-farm, signs all the affidavits as witness, showing in itself that the men were not acquainted in the town. Now if these men had no prior residence at Norwood Park, could they have obtained one by being inmates of the poor-house? To us the answer is plain, that as employés they could; as paupers they could not. In the case of Covode *vs.* Foster this rule was laid down as follows:

We think this the legal as well as the ordinary meaning of the term residence, and that accordingly the soldier who occupies a place at the command of his military superiors, the criminal who does the same thing while in custody in the hands of the criminal authorities, and the pauper who is placed and supported in the county poor-house at public expense, gains no residence in the town of his enforced stay.

And American Law of Elections, section 42:

In the absence of statute regulations the general rule seems to be that a pauper abiding in a public almshouse locally situated in a different district from that where he dwells when he becomes a pauper, and by which he is supported, does not acquire a residence in the almshouse for the purpose of voting.

In Cessna against Myers the case was argued *pro* and *con*, but the committee expressly refrained from deciding the point. So, to our mind, the general weight of authority is as indicated. But the statute of Illinois is somewhat peculiar and requires a *permanent* abode to constitute a residence for the purpose of voting. The constitution of the State merely requires a residence of one year in the State, ninety days in the county, and thirty in the township, to constitute a man a voter. Of course the legislature of the State has no right to change the qualifications of voters, but it has the right in a reasonable way to define the meaning of terms, and its definition in this case seems plain, reasonable, and in accordance with the true import of the term. A *permanent* residence is, then, necessary to constitute a person a voter in Illinois; and can a pauper obtain one by being an inmate of a poor-house? It is a rule which should be followed—

That the House of Representatives of the United States in construing a State law will follow the construction given it by the authorities of the State, whose duty it is to construe and execute it. Where a given construction has been adopted and acted upon by the State authorities the Federal Government should abide by and follow it. It was so held by the House of Representatives in the matter of election from the State of Tennessee, the report in which case states, "It is a well-established and most salutary rule that when the proper authorities of the State government have given a construction to their own constitutions or statutes, that construction will be followed by the Federal authorities." (Amer. Law of Elections, sec. 313.)

Now, in this case we have from the State of Illinois a decision of the supreme court on the subject of residence, and although it arose in a case for the support of paupers, and not of an election, yet it fully sanctions and sustains the general rule, and is broad enough in its language to cover this case—the Town of Freeport *vs.* Superiors of Stephenson County, 41 Illinois, 491—the syllabus of which case, which is fully sustained by the text, states:

And persons who were residents of a town, and had been sent to the poor-farm, * * * did not thereby lose their residence or cease to have it in the town from which they were sent, or become residents of the town in which the poor-farm was situated. As a general rule, persons under legal disability or restraint, persons of non-sane memory or want of freedom, are incapable of gaining or losing a residence by acting under the control of others; without the intent the residence cannot be changed, and a pauper maintained at the poor-farm is not an exception to the rule.

It will not do to say that this decision is not in point, stating the rule so strongly in defining the term residence, and what constitutes a residence. We believe both the general rule in such cases, and this decision in Illinois, settle our duty in this matter. Now, were these men paupers?

Eleven of them evidently were not, as the proof shows that O'Neill, Myers, Cummings, Sullivan, Hamer, Haffey, Rossman, Moore, Mullens, McFarland, and Beatty, were regular employés. Warner and Richards, also shown to be regular employés, did not vote, and the warden and deputy warden were registered and voted without taking affidavits. These embrace every name Kimberly claims as regular employés, and leave forty-seven persons unaccounted for; and we must, from the evidence, determine their status. Two of them, Fleming and Perry, are evidently paupers. Several of the others stated that they were paupers at the time they voted. "Thomas Johnson stated that he was supported by the county and not paid wages. John Mathews, Patrick McComick, Daniel Boyle, and Daniel McFarland made the same statement. Wm. Fleming, a blind man, stated that he was a pauper in the poor-house, as also M. A. Kinsella." (Record, page 293.) Corse testified that the parties who voted numbers 52, 54, 55, 58, 59, 73, 78, 91, and 92, said that they were paupers, supported by the county, and the most of them had not been in the county-house over thirty days. (Record, 296.) These voters were—

52. Thomas Sage.
54. William Clancy.
55. Hugh Gallagher.
58. John Walsh.
59. Thomas Monk.
73. I. A. Hepwell.
78. Daniel McFarland.
91. John Campbell.
92. Wm. Fleming.

These men made the statements in spite of strenuous efforts on the part of the warden to prevent their disclosing whether or not they were paupers. (Record, 291.)

In reference to the following-named persons, the evidence of Mr. Kimberly is very indefinite; he does not know their status, whether employés or not:

29 James Banks.
35 Stephen W. Heam.
92 Wm. Fleming.
40 John Fehlen.
30 Michael Carroll.
100 Geo. Heyden.
112 Jas. Brumdege.
108 Jno. Connell.
106 Ed. Perry.
48 Jno. Gelman.
77 Jno. Walsh.
31 Dennis Ryder.
84 John Donlen.
45 Michael Mayler.
106 Jno. Hatch.
59 Thos. Monk.
54 Wm. Clancy.

The following, he swears, were employés, employed by him by virtue of authority of the board of charity:

85 W. B. Perkins.
103 Michael Kinsella.
73 I. A. Hipwell.
20 Jas. O'Connell.
52 Thos. Sage.
87 Dan'l Boyle.
53 Jas. Love.
25 Jas. O'Brien.
39 Martin Maguire.
73 Wm. McDermott.
81 Jere Carroll.
47 Jno. Kibblin.
55 Hugh Gallagher.
41 Chris. Wright.
58 Jno. Walsh.
72 Jacob Stackhouse.
91 Jno. Campbell.
28 Dan'l McFarland.
111 Martin Doyle.
38 Wm. Wallace.
101 Alf. Stephens.
83 Eugene Meade.
49 Michael Cavanaugh.
27 Edward Lamb.
88 Jere McCartney.
79 Thos. Dwyer.
50 Michael Gelbraith.
44 Fred. Mohr.
86 Lewis Dempsey.
82 Thos. Howard.

We believe every rule of evidence would require us to come to the conclusion that the seventeen men whom Mr. Kimberly will not attempt to prove to be employés were paupers; for certainly their place of residence, their appearance, the manner in which they were brought to the polls, and the manner in which they were voted would raise that presumption, and, in the language of Mr. McCrary, at least shift the burden of proof upon the contestant.

Were the others not also paupers? Mr. Kimberly, the warden of the poor-farm, testifies that they belonged to a class of employés "to whom, in lieu of money, I allow payment in the way of extra clothing, board, and accommodation and liberties"—persons who were not on the payrolls, but employed as "assistants in the bakery, cooks in the kitchen, men in the wash-house and soup-house, men in care of the wards of the almshouse, nurses, teamsters, men in care of the stock, and men on the farm—gardeners." They are paid in "extra board, accommodations, clothing, and are allowed small perquisites, liberty." The same witness stated that he could not state where the men came from, but presumes "most of them were convalescent patients from the hospital, and that they came on physicians' certificates in the city, and that, as a general thing, they came to the institution as paupers;" that, "generally, this extra employment was given to the inmates of the institution." He also states the regular corps of employés consisted of twenty-one men and twenty-three women. We submit that this evidence of Mr. Kimberly is conclusive that these men were paupers, and came there mostly from the city. The manner in which such institutions are usually conducted is, to have a regular force of persons hired and paid to take charge, and that the assistants are always paupers; that the very object of having such an institution on a farm is to furnish such employment as the inmates may be capable of performing, so that they may, in part, make the institution self-supporting; and we do not understand that the mere fact that paupers labor, that a system of rewards is established to encourage them to labor, that thereby their status is changed. The very evidence of Kimberly calling their pay "extras" shows that without this employment they would receive ordinary fare. Notice his language: "Extra board," "extra clothing," "privileges at first table," "extra diet;" "in the winter-time, an extra meal;" "extra allowance of clothing;" "privilege of selecting their own ward;" "small perquisites." The evidence is so convincing that we hardly feel that we need go beyond Kimberly's testimony to show that these employés were paupers from the city; but we have, besides, conclusive evidence as to their status. Comparing the lists we have made of persons who called themselves paupers and those whom Kimberly calls employés, we find that the names of Thomas Sage, Hugh Gallagher, Daniel McFarland, I. A. Hipwell, John Campbell, Daniel Boyle, and M. A. Kinsella appear on both lists, showing that these men did not conceive these extras changed their status, and that they were not paupers, supported by the county, as they stated they were. If ever a witness was contradicted, Mr. Kimberly is, by the very facts he testifies to, and by the statements of the very men whom he claims as his employés. The conclusion, to our mind, is irresistible, that these persons were never residents of Norwood Park, and were paupers; and we reject the votes of each and all of the forty-seven voters named on our two lists. Of these, two voted for Mr.

Farwell, and forty-five for Mr. Le Moyne; and hence, to recapitulate, we find that the following votes must be subtracted from Mr. Farwell:

| | |
|---|---|
| First precinct, twentieth ward, total majority | 171 |
| Second precinct, twentieth ward, illegal votes | 10 |
| Fourth precinct, eighteenth ward, illegal votes | 12 |
| Fourth precinct, eighteenth ward, unsigned jurats | 5 |
| Fifth precinct, twentieth ward, illegal votes | 3 |
| Norwood Park, pauper votes | 2 |
| Total reduction | 203 |
| To which we add the proved votes for Mr. Le Moyne in first precinct, twentieth ward | 16 |
| Total for Le Moyne | 219 |

The following must be subtracted from Mr. Le Moyne:

| | |
|---|---|
| Fourth precinct, eighteenth ward, illegal votes | 11 |
| Fourth precinct, eighteenth ward, unsworn jurats | 2 |
| Norwood Park, pauper votes | 45 |
| Total reduction | 58 |
| To which we add Mr. Farwell's official majority | 186 |
| Votes for Mr. Farwell, first precinct, twentieth ward | 3 |
| | 247 |

Electing Mr. Farwell by a majority of 28.

Should the House count the votes cast for Mr. Le Moyne as proved during the last ten days of his taking testimony in the first precinct, twentieth ward, and reject the returns from the third precinct of the eighteenth ward, it would still elect Mr. Farwell by a majority of three.

The undersigned, therefore, recommend the adoption of the following resolutions:

*Resolved*, That John V. Le Moyne was not elected and is not entitled to a seat in this House.

*Resolved*, That Charles B. Farwell was elected and is entitled to a seat in this House.

WM. R. BROWN.
G. WILEY WELLS.
JNO. H. BAKER.

Mr. MARTIN I. TOWNSEND, a member of the Committee of Elections, is absent, but is understood by his colleagues signing the above to agree with them in these views.

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## COX vs. STRAIT.—SECOND CONGRESSIONAL DISTRICT OF MINNESOTA.

This case devolved upon the extent and boundary of territory comprising the Congressional district, and charges were made that election districts had been illegally established.

The committee held that the legislature had, under the State constitution, the authority to consolidate counties and establish representative, senatorial, and Congressional districts. A State legislature has supreme power of legislating, except where it is restricted by the constitution.

Charges of bribery on the part of contestant were made, but the evidence submitted was wholly insufficient to sustain the charge.

The county commissioners having designated and established election districts at a special meeting, and not in accordance with the provisions of the State law, the committee held

that the action of the commissioners was without authority, and null and void, and no legal election could be held at said districts.

Report adopted June 23, 1876.

Authorities referred to: Constitution of Minnesota, sec. 1, art. 11; election law of Minnesota, sec. 40.

April 12, 1876.—Mr. John T. Harris, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the case of E. St. Julien Cox, claiming to be admitted to the seat from the second Congressional district of Minnesota, respectfully report:*

The State board of canvassers found a majority for the contestee of 221 votes in this district. But the contestant claims that he in fact received a majority of the legal votes cast at the election November 3, 1874, and alleges that a large number of votes were wrongfully canvassed for the contestee.

It will not be necessary to a full understanding of this case to set forth the notice of contest and answer thereto in full, but it will be sufficient to state the grounds taken by the parties at the hearing before the committee.

The contestant claimed that the following votes were wrongfully canvassed for the contestee:

First. All the votes given in that part of what is now called Kandiyohi County, which was formerly the county of Monongalia, which gave a majority of 188 for the contestee.

Second. The votes from Southeast, Blaen Avon, Michigan, South, Ceresco, East, and Northeast voting precincts, in the county of Lyon, which gave 111 majority for contestee.

Third. The votes at West Newton precinct, in the county of Nicollet, which gave 61 majority for the contestee.

Fourth. The votes in the town of Hawk Creek, in the county of Renville, which gave the contestee a majority of 97 votes.

Fifth. The votes in the town of Sacred Heart, which gave the contestee a majority of 144 votes.

Sixth. The contestant also claims that 200 votes were obtained for the contestee through bribery, and that the same ought to be deducted from the contestee's majority, making in all 801 votes, which will make the majority for the contestant 580 instead of 221 for contestee.

The contestee denies all the allegations of the contestant relative to said votes, and alleges that the same were rightfully canvassed for him. The contestant claims that the votes cast by the voters residing upon the territory which was formerly the county of Monongalia ought not to be canvassed, for the reason that Monongalia County was in fact in existence as a separate county on the 3d day of November, 1874, notwithstanding the legislature had, in 1870, undertaken to consolidate the counties of Monongalia and Kandiyohi and form one county under the name of Kandiyohi, and that as all the territory of the State not included in the first and second districts was included in the third district, and as the first and second districts were made up of specified counties, Monongalia County, not being included in either the first or second district, must be included in the third district. The only ground taken by the contestant entitled to serious consideration why Monongalia should now be regarded as having been, in November, 1874, a separate and independent county, is that the legislature had not the power to

consolidate the two counties of Monongalia and Kandiyohi, owing to a prohibition which, it is alleged, exists in the constitution of Minnesota in regard to the original counties, those existing at the adoption of the constitution, in 1857.

Section 1, article 11, constitution of Minnesota, is as follows:

The legislature may from time to time establish and organize new counties, but no new county shall contain less than four hundred miles; nor shall any county be reduced below that amount; and all laws changing county-lines in counties already organized, or for removing county-seats, shall, before taking effect, be submitted to the electors of the county or counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of such electors. Counties now established may be enlarged, but not reduced below four hundred square miles.

The contestant claims that the clause which prohibits the reducing of the counties then existing below four hundred square miles, and the provision that counties then existing may be enlarged, but not reduced below four hundred square miles, prohibit the extinguishing of the county of Monongalia by consolidating it with the county of Kandiyohi, and that the act of the legislature of Minnesota consolidating those counties is unconstitutional and void, and that Monongalia is now in fact a county, and not being included by name in either the first or second district, belongs to the third district instead of the second. It appears that the object sought to be accomplished by that section of the constitution is to prevent the reducing of the original counties below four hundred square miles, and the formation of new counties with a less amount of territory than four hundred square miles, and to prevent the changing of county-lines in counties then organized without the consent of the electors of the counties to be affected thereby. The legislature certainly has the right to consolidate counties formed subsequent to the adoption of the constitution. There is no direct prohibition to the consolidating of original counties and thereby forming a new county. The only direct prohibition is that the county so formed shall not contain less than four hundred square miles. The power to form new counties without specifying the territory out of which they may be formed certainly gives the right to form a new county by consolidating counties, whether original or otherwise, unless the prohibition relative to reducing the original counties below four hundred square miles shall be held to forbid the extinguishment of a county by consolidating it with another county. This does not seem to be the mischief designed to be remedied. In fact, the consolidating of counties might be a remedy for the evil, and in manifest furtherance of the object of this constitutional provision, viz, to avoid the existence of small counties. Constitutional restriction upon legislation must be plain and certain. A State legislature has supreme power of legislating except where it is restricted by the constitution; and everything will be presumed in favor of the power of the legislature. The courts will not declare an act unconstitutional unless it is clearly made so by an express provision of the constitution. Your committee are strongly of the opinion that the act consolidating those counties is constitutional, but have not deemed it necessary to decide that question in this case. The real question is, What territory was included in the second district? The representative districts are formed of contiguous territory. In 1872 the legislature of Minnesota set off a certain amount of territory as the first district, a certain amount of territory for the second district, and then enacted that all the territory of the State not included within the first and second districts should compose the third district. The legislature designated the territory to be comprised in the second district by naming the counties to be included in it, and it must be assumed that it included the

territory which the legislature itself had determined belonged to said counties. The legislature passed the act of 1870 consolidating Monongalia and Kandiyohi Counties, and the same was made effectual by the methods provided in the act. The consolidation of the counties was recognized in the division of the State into senatorial and representative districts in 1871 (chap. 20), and it is plain that the legislature when it designated the county of Kandiyohi as a part of the second district designated it as it was formed by itself and did include in it the territory which formerly composed the county of Monongalia. Your committee, therefore, find that the majority of 188 votes canvassed for the sitting member was rightly canvassed, and ought not to be deducted from his majority of 221.

Second. It is provided (page 220, Statutes at Large, sec. 19) that the board of commissioners shall meet at the county-seat of their respective counties, for the purpose of transacting such business as may devolve upon or be brought before them, on the first Tuesday of January and September in each year, and may hold such extra sessions as they deem necessary for the interest of the county; such extra sessions shall be called by a majority of the board, and the clerk shall give at least ten days' notice thereof to the commissioners, but no regular session shall continue longer than six days, and no extra session longer than three days.

Page 233, sec. 31: The commissioners of such county (any county not divided into towns) shall, at their stated meetings in January and September, upon the petition of not less than ten legal voters not residing within ten miles of any established election-district, create and establish within said county an election-district at such point as will be most convenient for the persons so petitioning; but no place of holding elections shall be located in said election-districts within ten miles of any other place of holding elections previously established, nor shall the commissioners create any election-district except at the time of their stated meetings, and then only in compliance with the request of ten or more legal voters residing not less than ten miles from any established election-district. The election-districts of Southeast, Blaen Avon, Michigan, South, Ceresco, East, and Northeast were not established at a stated meeting of the county commissioners, but at a special meeting holden October 5, 1874 (pages 50, 51, record), and were therefore not legally established. The action of the county commissioners was without authority of law, and null and void, and no legal election could be held at either of said districts; therefore, 111 votes must be deducted from the majority reported for the contestee—that being the majority he received in said districts which was wrongfully canvassed for him.

Third. The sixth specification in the contestant's notice of contest is as follows:

Sixth. That in the town of West Newton, in the county of Nicollet 68 votes were returned as cast for you and 7 votes were returned as voted and cast for me, at said election for member of Congress, and which were counted and included by said State board of canvassers in the official canvass of votes for member of Congress of said district at said election, which was wrongful and illegal, because the judges of election of said town closed the polls on said election-day, and adjourned the election and refused to receive, and did not receive, votes for about the space of one hour, contrary to the form of the statute in such case made and provided.

To which the contestee answers:

With regard to your sixth charge and specifications thereunder and the several subdivisions thereof, I deny the same, and each and every part thereof, except the number of votes cast, for whom cast, the points at which said votes were cast, and that said votes were included in said canvass, and as to these latter averments I have no knowledge or information whatever.

It appears that the election in this town was holden in one of the rooms of a public house. The judges of the election adjourned at 12 o'clock until 1 o'clock, and took dinner with the clerks of election in the same house and in an adjoining room to that in which the election was held, leaving the family who occupied the house, viz, Johannes Junker, his wife and children, in the room where the election was held. The judges of election left the ballot-box on their table in this room. It appears that the ballot-box was not sealed, nor in any way guarded or protected. It is not certain whether other persons than the family of Junker entered the room while the ballot-box was thus unguarded. Many persons were about the building, and could have gone into the room if they had desired so to do.

Johannes Junker testified thus (p. 26):

MARCH 2, 1875.

J. JUNKER, a witness of lawful age, produced by the Hon. E. St. Julien Cox, and being duly sworn according to law, deposes and says:

Question. Where do you reside?—Answer. At West Newton, county of Nicollet and State of Minnesota.

Q. Were you there at the election held at that place November 3, 1874?—A. I was.

Q. Were you acquainted with the judges of election on that day?—A. I was.

Q. Where was the election held?—A. At my house.

Q. At what time were the polls open on that day?—A. It was after 9 o'clock a. m. of that day.

Q. Did the judges of election adjourn at noon on that day and close the polls?—A. They did, at 12 o'clock, and opened it again after 1 p. m. of that day.

Q. Did the judges of election leave the room when they adjourned where the polls were held?—A. They did.

Q. Do you know where they went to?—A. They all went into another room to eat their dinner.

Q. What did they do with the ballot-box during the adjournment?—A. Left it on the table in the room where they held the polls.

Q. Were the clerks of election at dinner with the judges at that time?—A. They were.

Q. Was there any one in the room where they had been voting while the judges and clerks were at dinner?—A. There was; myself, wife, and children were there, and others might have been there for what I know. The room was open.

Q. Did you see the ballot-box in the room at the time you were in the room?—A. I did.

Q. Was it in charge of any one at that time?—A. It was not.

Q. Who were the judges of election on that day?—A. Barney Reimeller, Joseph Brandel, and Joseph Stitz.

Q. What time were the polls closed that evening?—A. Before 5 o'clock that evening.

Q. During the time that the board adjourned between 12 and 1 o'clock, for dinner, how many persons were around and in the building at that time?—A. More than forty or fifty.

Cross examined, under protest, by contestee:

Q. What did they do with the ballot-box heretofore, when they went to dinner?—A. They lefe it on the table, the same as they did this last time.

Q. Did your wife and family always have access to the room where the ballot-box was when the judges went to dinner heretofore?—A. Yes, sir.

Q. Did you, or family, or any other person, ever touch the ballot-box, or any of the papers connected with the election, when left alone in the room?—A. Not to my knowledge.

Q. Was there any other person but you and family went into the room where the ballot-box was left during the adjournment at the last election-day?—A. I think there was some, but don't know who.

Q. How were the ballots received; by the voters going into the room, or delivering them through a window?—A. I know of no one except myself who voted in the room; the others, or most of them, voted through the window.

Redirect examination by St. Julien Cox:

Q. Did you see the ballot-box used that last election-day at West Newton aforesaid?

(Contestee objects to the question for the reason that no complaint was made in the notice of contest of the kind or character of ballot-box used.)

A. I did.

Q. What kind of a box was it?—A. A wooden box.

Q. Was there any lock on it?—A. There was none.

Q. Was there any fastening on the box?—A. There was a string around it with a seal on it, before they commenced.

Q. What kind of a seal?—A. A string around it fastened with sealing-wax.

Q. Was there an outside door to this room where they held the election?—A. Yes, sir.

Q. Was the outside door locked?—A. I am not sure. I went out when they were eating dinner, and it was not locked.

Q. Did you lock the door when you went out?—A. I did not.

Q. Was there much of a crowd standing around outside at that time?—A. There was.

Q. Was there anything to prevent the crowd from going into that room at that time?—A. Not that I know of.

Q. How long were you in the room at that time?—A. I only went through the room.

Q. Was there anybody else but you in the room at the time of the adjournment?—A. My children and wife.

Q. Was there a good deal of excitement there, that day, over election?—A. Lots of it.

Q. During the adjournment, and while the judges were absent from the polls, did you see any men coming out of the room where the polls were held, other than the judges or clerks?—A. I did see lots of men other than the judges or clerks of election.

Recross examination:

Q. Who did you vote for on the last election?—A. I voted for E. St. Julien Cox.

JOHANNES JUNKER.

## James Newton testifies as follows (p. 30):

MARCH 2, 1875.

JAMES NEWTON, a witness of lawful age, produced by Hon. E. St. Julien Cox, and being duly sworn according to law, deposes and says:

(At the request and demand of the respondent, and pursuant to the act of Congress of March 10, 1873, in such case made and provided, Christ. Langguth, esq., a notary public, residing in said second district, is associated with C. R. Davis, the notary public heretofore directed by the contestant to take these depositions.)

Question. Where do you live?—Answer. In the town of West Newton, Nicollet County, Minnesota.

Q. Were you at the polls at the town of West Newton, aforesaid, at the time of the last general election, held on the 3d of November, 1874; and, if so, at what hour in the day?—A. I was, and came there about 8½ o'clock a. m.

Q. Did you see anybody around there that day who was not a resident of that town?—A. I did.

Q. For whom was he electioneering for member of Congress?

(Objected to by respondent on the ground of its being incompetent and immaterial.)

A. For H. B. Strait for Congressman.

Q. Who was it that was so electioneering?

(Objected to by respondent as being incompetent and immaterial.)

A. He was a nephew of one Bensman.

Q. Were the polls closed at noon on that day?—A. They were.

Q. Do you know personally of any money or other consideration being used for the election of H. B. Strait for member of Congress in that town on that day?—A. I do not personally.

Q. Have you received any information, or have you been informed, or have you learned of the use of money or other means at the last general election in the town of West Newton for the purpose of inducing voters to vote for B. H. Strait for member of Congress in the second district at or prior to the time of such election?

(Objected to by respondent for that it is irrelevant and immaterial, and inadmissible under any allegation in the notice of contest.)

A. There was not.

Q. Was there other means used than stated in above question?

(Objected for same reason.)

A. There was, if liquor constitute means.

Q. Was liquor freely used around those polls that day?—A. There was, decidedly.

Q. In whose favor?—A. By a friend of H. B. Strait's.

Q. How long did you remain around those polls?—A. I remained until about 1 o'clock p. m.

Q. Do you know whether the bar was kept open on that day at the Traveler's Home of West Newton?—A. It was when I come down in the forenoon.

## Thomas Morgan also testified (p. 31):

MARCH 2, 1875.

THOMAS MORGAN, a witness of lawful age, produced by E. St. Julien Cox, and being duly sworn according to law, deposes and says:

(Respondent objects to the taking any testimony, for the reason stated in the commencement.)

Question. Were you the clerk of election at the last general election held at West Newton, in said county?—Answer. I was.

Q. What time were the polls opened at that place on that day?

(Objected to by respondent, on the ground that there is no complaint in the notice of contest of the time of opening the polls in the said town of West Newton.)

A. About 20 minutes after 9 in the morning.

Q. What time did they close that evening?—A. At 5 o'clock p. m.

Q. Was there any adjournment at noon of that day?—A. There was, for one hour.

Q. The polls were open from 20 minutes past 9 a. m. until 12 m., closed from 12 m. to 1 p. m., and open from 1 p. m. until 5 p. m., when they closed?—A. Yes.

Q. What kind of a ballot-box was there used at that election?

(Objected to for reasons as before.)

A. A small wooden box without a lock.

Q. What was the vote of that town on that day for judges of the supreme court, and for Congressman for the second district?—A. One majority (Republican) for judges of the supreme court, and Hon. H. B. Strait had 61 majority for Congressman (Republican).

Q. At the adjournment at 12 m., what was done with the ballot-box?—A. We left it on the table where we voted.

Q. Was the room locked where you left the ballot-box?—A. The outside door was fastened with hasp or catch.

Q. Was there access to the room where the ballot-box was from the inside of the house?—A. There was.

Q. Do you know of any one going in and out of the room where the ballot-box was left during the adjournment?—A. Junker and wife went in, and I know of none other.

Q. Were there many persons around the house at that time?—A. Yes; quite a number.

Q. What is the usual status of the vote in that town?—A. About a tie, and sometimes a Democratic majority.

Q. Was there any one left in charge of the ballot-box while you and the judges were at dinner?—A. No one.

Cross-examination by L. M. Brown, attorney for respondent, under protest:

Q. Was there any regular announcement made about the adjournment at 12 o'clock?—A. There was, by one of the judges publicly declaring it.

Q. Do you know how many names there are on your poll-list?—A. About one hundred and thirty-three.

Q. Was there any fastening on the ballot-box?—A. Yes; it was tied with a string and had no sealing-wax on it.

Redirect:

Q. Was there any paper pasted over the hole in the ballot-box when you went to dinner during the adjournment?—A. No; there was not.

THOS. MORGAN.

Your committee regard the conduct of the judges of election at this place in leaving the ballot-box for the space of an hour unsealed and unguarded as highly reprehensible. It is of the highest importance that the ballot-box should be guarded and protected in the most careful manner; that all the provisions of law made for the security of the ballot should be strictly obeyed. There should not be the least opportunity for tampering with the ballots. It is certainly a serious question whether such an irregularity as this ought not to vitiate the election; but your committee under all the circumstances have not felt compelled to reject this entire poll, there being no evidence that the ballot-box was actually tampered with, but, on the contrary, there is some negative testimony showing that it was not tampered with. Your committee would, were there any facts tending to show that the ballot-box had been tampered with, have decided to reject the returns from this poll. The adjournment for dinner has frequently been decided not to be sufficient to vitiate an election. The law of the State of Minnesota provides that no election-returns shall be refused where there has been a substantial compliance with the law.

Section 40, election law of Minnesota:

SEC. 40. No election-returns shall be refused by any auditor for the reason that the same are returned or delivered to him in any other than the manner directed herein; nor shall the canvassing-board of the county refuse to include any returns in their estimate of votes for any informality in holding any election or making returns thereof, but all returns shall be received and the votes canvassed by such canvassing-board and included in the abstracts, provided there is a substantial compliance with the provisions of this chapter.

The fact ought also to be considered, in determining what should be done with the votes at this place, that the contestant did not in his notice of contest claim that the ballot-box was tampered with, or even left unguarded, but rested his claim to have the vote excluded upon the sole and untenable ground of the adjournment of the judges of election for an hour at noon. The contestant claims that the vote of Hawk Creek, in the county of Renville, ought not to be canvassed, for the reason that the election was adjourned for an hour at noon and the ballot-box not properly guarded. The evidence is as follows (Jesse Wynn, p. 48):

MARCH 12, 1875.

JESSE WYNN, a witness produced by E. St. Julien Cox, and being duly sworn, says:

Question. Where do you reside?—Answer. In Renville County, State of Minnesota, town of Hawk Creek, and was present at the last general election held at that town in November last.

Q. At whose house were said election-polls held?—A. At a school-house.

Q. Do you know at what time the polls were opened on that day?—A. Cannot tell the exact time.

Q. Were the polls closed at noon at that place and at that election?—A. They were, for the space of one hour at least.

Q. Was the ballot-box left and no votes received by the judges and clerk of said election during said hour?—A. It was left in the room were the polls were held during said hour, and the judges and clerks were out and around said school-house.

Q. Was anybody in charge of said ballot-box?—A. I did not see anybody in particular.

Q. Was the ballot-box sealed up during this hour?—A. It was not.

Q. Was there much of a crowd in and around the room where the ballot-box was during this hour?—A. There was; from twenty-five to fifty.

Q. Did the crowd have access to the ballot-box during that hour?—A. They did.

Q. Was there anything or person to prevent them from putting as many ballots as they desired into that ballot-box during that hour?—A. I think not.

Cross-examined under protest:

Q. How came the judges to adjourn the election at that time?—A. I suppose for dinner.

Q. Did you see all of the judges and all of the clerks out of that room during said time at any one time?—A. I can't say that I did.

Q. Can you say that you saw all of the judges out at any one time?—I can't say positive.

Redirect:

Q. Did you see the ballot-box during said hour at any time without any of the judges or clerks near it or around it?—A. I did.

Recross:

Q. What was the size of the school-room?—A. About 25 by 30 feet.

JESSE WYNN.

This evidence does not show such a state of facts as will, under the rule applied in the case of the town of West Newton, vitiate the poll, and the returns must stand as made by the officers of the election.

Fifth. The contestant claims that the vote of Sacred Heart, in the county of Renville, should not be canvassed, for the reasons that the ballot-box, for an hour or an hour and a half at noon, was unsealed; that unnaturalized persons voted, and the election-returns were conveyed from the board of town canvassers to the county auditor by an unauthorized person, and unsealed; and that there was an irregularity in the appointment of two of the supervisors of election. The evidence as to this town is from one E. B. Hale, and is as follows (p. 49):

MARCH 12, 1875.

E. B. HALE, a witness produced by E. St. Julien Cox, and being duly sworn, deposes and says:

Question. Where do you reside?—Answer. Town of Sacred Heart, county of Renville, Minnesota.

Q. Were you the clerk of the election held at said town at the last general election, 1874?—A. I was.

Q. Was there any adjournment or closing of said polls at noon of said election-day?—A. There was, at noon, for the space of one hour or an hour and one-half, during which time no votes were received by the judges of said election.

Q. Was the ballot-box sealed up during said adjournment?—A. It was not.

Q. Did the judges of election on that day, who were first sworn as such judges, act as judges of said election during the whole of said day?—A. They did.

Q. Did the supervisors of that town act as judges of that election on that day?—A. Two of them did and one did not, he being appointed by the other two supervisors and not chosen by the electors present.

Q. Do you know of any minors or unnaturalized persons voting at that election on that day?

(Objected to, for the reason that their names do not appear in the notice, and no notice has been given of illegal votes by contestant.)

A. I do.

Q. How were the returns conveyed from the board of town canvassers to the county auditor, and were they sealed or not?—A. They were unsealed, and rolled up in a newspaper and tied with a piece of yarn, and I conveyed them.

Cross-examined under protest:

Q. Did you deliver the returns to the county auditor just as you received them from the town canvassers?—A. I did.

E. B. HALE.

It does not appear from the evidence that the ballot-box was not all of the time in sight of some one of the election-officers during the adjournment for dinner, and we apply the same rule here as in the case of the town of West Newton. It does not appear that any unnaturalized person voted, and the officers who presided at the election were *de facto* officers, and there is nothing shown which so impeaches their action as to vitiate the poll on that account. The returns should have been conveyed to the county auditor by one of the judges of the election sealed, but were conveyed by the witness, an unauthorized person, and were unsealed. This is a grave irregularity, but the evidence is that he delivered the returns to the county auditor just as he received them from the town canvassers, and this testimony is not impeached. The committee do not, therefore, reject the returns from this town.

Sixth. The contestant claims that 200 votes given for the contestee should be deducted for bribery. The evidence shows that Ph. Stelzer received a check for $25 in a letter which purported to be from the contestee, and requesting Stelzer to use his influence in the election for the contestee (pp. 38, 39); also Julius Christianson received $2 from one J. B. Sackett the day before election, and was promised $2 on election-day, "to peddle Republican tickets with H. B. Strait's name on." The $2 promised was paid the day after election. A. J. Lamberton testified that "common report was that J. B. Sackett and William Beckel were distributing a great deal of money for the purpose of buying and influencing votes for H. B. Strait for member of Congress." But he had no personal knowledge of a dollar having been spent for that purpose. Your committee find the evidence wholly insufficient to establish the charge of bribery.

The contestee makes counter-charges, alleging irregularities in a large number of voting-precincts which gave a majority for the contestant. These voting-precincts are in the counties of Carver, Le Sueur, Sibley, and Dakota, but the irregularities, where any are shown to exist, relate to the manner of returning the votes, the swearing of the election officers and adjournment for dinner, and are not of that nature and character and extent which, unaccompanied with fraud, will vitiate the returns. In fact, fraud is not alleged, except as to West Saint Paul, in the county of Dakota. The contestee claims that actual fraud was committed at West Saint Paul precinct, and that several persons voted who

were not legal voters of this precinct. The only witness who gave any evidence entitled to any weight is one Robert Hare. He says that four Germans and one Swede who lived in Mendota, another precinct in the same county, voted at this precinct. He could not give their names, and did not know how they voted. He also testified that he knew three men who voted at this precinct, but resided in the city of Saint Paul, Ramsey County. He does not know how they voted. His testimony fails to establish fraud, neither does he show himself possessed of such knowledge with reference to the residences of these parties as to entitle his evidence to sufficient weight to establish the fact that they were not legal voters in the precinct, and the committee have therefore decided to let the returns of the judges of election stand unchanged. The committee do not make any deductions from the votes of the contestant, and only deduct from the contestee the majority of 111 votes which were canvassed for him in those precincts in Lyon County which were not legal voting-precincts. The returns as corrected give Horace B. Strait 110 majority, instead of 221. Your committee find that he was elected by that majority, and recommend the passage of the following resolution:

*Resolved*, That Horace B. Strait was duly elected, and is entitled to retain the seat which he now holds from the second Congressional district of Minnesota.

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## SPENCER vs. MOREY—FIFTH CONGRESSIONAL DISTRICT OF LOUISIANA.

Charges of fraud and irregularity in the conduct of election, and unlawful count of ballots by the commissioners of election.

The ballot-box at one of the precincts was removed to a distant point from where the election was held, and the count proceeded with, with the assistance of tally-keepers who were not sworn officers. It was held that the removal of the ballot-box gave opportunity for fraud, and the returns were excluded from the count.

The ballot-box, tally-sheets, &c., at one of the election precincts were unaccounted for, and no evidence of the records or ballots cast were in the possession of the clerk of the court, nor had he any knowledge of their whereabouts. A copy of the return produced by one of the election-officers at the precinct was not regarded as a valid return.

Majority and minority report submitted.

Minority report rejected May 31, 1876. Yeas, 76; nays, 101; not voting, 112.

Majority report adopted.

William B. Spencer sworn in June 8, 1876.

Authorities referred to: American Law of Elections, sec. 291, sec. 441, secs. 305, 306, sec. 274, sec. 174, pages 126, 127, 200; Chrisman *vs.* Anderson, 1 Bartlett, 328; Adams *vs.* Barnes, 2 Bartlett, 760, 768; Goggin *vs.* Gilmore, 1 Bartlett, 70; Little *vs.* Robbins, 1 Bartlett, 130; Louisiana Election Laws, sec. 43; supreme court of Louisiana, Burton *et al.* *vs.* Hicks *et al.*, page 156; Hall and Clark, 116; Biddle and Richard *vs.* Wing (C. and H., 506); Draper *vs.* Johnson (C. and H., 703); Mallory *vs.* Menall (C. and H., 328); Brightley's Election Cases, page 571, sec. 551; Augustin *vs.* Eggleston, 12 Annals, 356; 9th Ann's, 537; 10th Ann's, 732; Act of 1873, page 18; House Reports, Adams *vs.* Wilson, Clark and Hall, 375; State *vs.* Steers, Brightley's Contested Cases, page 303; Colden *vs.* Sharpe (C. and H., 369); Weaver *vs.* Given, Brewster's Reps., pages 144-'5; Flanders *vs.* Hahn, 1 Bartlett, 438; McHenry *vs.* Yeaman, 1 Bartlett, 550; Blair *vs.* Barrett, 1 Bartlett, 315.

April 27, 1876.—Mr. House, from the Committee on Elections, submitted the following report:

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| WILLIAM B. SPENCER *vs.* FRANK MOREY. | Contested election from fifth district of Louisiana. |

*The Committee on Elections, to whom was referred the above case, report:*

The fifth congressional district of Louisiana is composed of fourteen parishes.

It is admitted by Morey, the contestee, that in nine of said parishes, to wit, Caldwell, Catahoula, Claiborne, Franklin, Jackson, Lincoln, Richland, Union, and Tensas, Spencer, the contestant, received majorities aggregating 3,944.

It is conceded by Spencer, the contestant, that in four of said parishes, to wit, Madison, Morehouse, Ouachita, and Concordia (excluding ward No. 5, in the latter parish, which is contested), Morey, the contestee, received majorities amounting to 2,548.

The whole of Carroll Parish and ward No. 5 of Concordia Parish are contested, and no other part of the district.

It results from the admissions and agreement of the parties that Spencer, the contestant, enters the contested territory with a majority of 1,396 votes in his favor.

We will take up the contested points in the district in the order in which the parties have presented them in their arguments before the committee.

1. Fifth ward of Concordia Parish.

The contestant claims that the returning board unlawfully counted the returns from this ward; that the parish supervisor unlawfully returned the votes of said poll; that the commissioners at said poll or ward refused to count the votes at the voting-place, as by law they were required to do, but, on the contrary, carried the ballot-box, late at night, a distance of fifteen miles to Vidalia, the county-site of Carroll Parish, went into a private apartment and counted the votes, not in the presence of the public, and made no returns thereof for two days; all of which he claims is presumptive evidence of fraud and wrong.

Morey, the contestee, replies in general terms that he is entitled to the number and majority of votes with which the returns of the commissioners of election and the State returning-board credit.

The election-laws of Louisiana seem framed with a view to prevent, as far as may be, the possibility of frauds, and are much more specific in their details and stringent in their requirements than those of many other States of the Union. A brief outline of the system, in view of the questions arising in this case, may not be deemed inappropriate.

Three commissioners, selected from different political parties, and of good standing in the party to which they severally belong, are to preside over and conduct the election—one of their number to be, by them selected to act as clerk. Before entering upon their duties, each one of them is to take and subscribe an oath that he will "faithfully and diligently perform the duties of a returning-officer as prescribed by law"; that he will "carefully canvass and compile the statements of the votes, and make a true and correct return of the election."

They are to receive the ballots of all legal voters, and deposit the same in the ballot-box, and this they are to do "in the full and convenient view of the voter himself." Each voter has "the right to deposit

his own vote in the ballot-box with his own hand." It is made a misdemeanor for any commissioner to receive a ballot from any other hand than that of the voter himself, or for any other person than the voter himself to hand a ballot to a commissioner. A list of persons voting is to be kept, numbered from one to the end, said list to be signed and sworn to by the commissioners before leaving the place or opening the ballot-box. The votes are to be counted by them immediately after the close of the election, without moving the box from the place where the election was held, and the counting must be done in the presence of any by-stander or citizen who may be present. Tally-lists of the count are also required to be kept, and, after the count, the ballots counted are to be put back into the box and preserved until after the next term of the criminal or district court, as the case may be. They are to make a list of the names of all persons voted for; the offices for which they were supported; the number of votes received by each; the number of ballots contained in the box, and the number rejected, and the reasons therefor. They are then to make out duplicates of such lists, to be signed and sworn to by them; one of said duplicates to be delivered to the supervisor of registration of the parish, and the other to the clerk of the district court of the parish, and this is to be done by all or one of the commissioners in person, within twenty-four hours after the closing of the polls.

To the supervisor of registration, as we have seen, one of the duplicate returns is to be delivered within twenty-four hours after the closing of the polls. This supervisor of registration, when the returns from the different wards in the parish are made to him, is required, within twenty-four hours thereafter, to compile or consolidate the same, and this consolidated return is to be certified as correct by the clerk of the district court. The supervisor is then to forward these consolidated returns, together with the originals received by him from the commissioners, to the State returning-board, the same to be inclosed in an envelope of strong paper or cloth, securely sealed, and sent by mail.

The State returning-board is to be composed of five persons, selected from all political parties. They are to meet in New Orleans within ten days after the election, to canvass and compile the statements of votes made by the commissioners of election, and make returns of the election to the secretary of state—the returns to be compiled in duplicate; one copy to be filed with the secretary of state, and of the other they are to make public proclamation by printing in the official journal and such other newspapers as they deem proper, declaring the result of the election. These returns of the State returning-board are made *prima-facie* evidence of election.

There are various and specific provisions in reference to disorder, intimidation, illegal voting, and fraud, to some of which are affixed heavy penalties—all intended to protect the elector in a fair and untrammeled exercise of his right to vote, and to guard the ballot-box from improper influences.

The first section of the act containing these election laws says that elections "shall be held in the manner and form and subject to the regulations hereinafter prescribed, *and no other*."

In view of the specific requirements of the law upon the subject, it must be admitted that the conduct of the commissioners in totally disregarding its plain provisions is somewhat extraordinary. The law required them not to remove the ballot-box from the place where the election was held until they had counted every vote in it in the presence of such of the voters as saw fit to be present and witness the counting.

This counting they were required to commence immediately on the close of the polls, and their returns were to be made out and delivered to the supervisor of registration within twenty-four hours after the voting ceased.

Instead of doing this, after the close of the election, between six and seven o'clock in the evening, they took the ballot-box and started with it to Vidalia, the parish site, a distance of some sixteen miles from the voting-place. Dameron, one of the commissioners, who is sworn by both parties, in his testimony says when the polls were closed the box was locked, and he took the key and gave the box to Robert H. Columbus, another commissioner. They started to Vidalia on horseback, and when they arrived at the store of one Witherspoon, the suggestion was made that Dameron should get into a buggy with one Irvine and take the ballot-box in the buggy with him. They then proceeded to Vidalia, one of the commissioners riding in front and the other in rear of the buggy, on horseback. They reached Vidalia between eleven and twelve o'clock that night, and finding the court-house occupied by the officers of election at Vidalia, they went up-stairs into the room of the tax-collector, opened the box, and commenced counting the votes. They counted until half past two o'clock that night, when, being fatigued, they adjourned for the night. When the box was closed, Dameron says he locked it and gave the key to Columbus, and took the box himself with him to the hotel, where he and William C. Yorger, United States supervisor, occupied the same room for the balance of the night. The box was placed under the bed during the night. The next morning, Dameron says, he took the box with him to the table when he went to breakfast. After breakfast they again met in the up-stairs room of the court-house, opened the box, and commenced counting, and after counting there awhile went down into the court-room. They completed their returns on Wednesday night, November 3, between ten and eleven o'clock, and made their returns to the supervisor of the parish on the next day, 4th November, between 12 m. and 1 o'clock p. m. Dameron further says that during the time they were counting the votes in the tax-collector's office there were several spectators present; the tax-collector's office was considered a public office; says when he went to his meals, during the counting, he left the box in the court-room in charge of his co-commissioner Columbus, and took the key himself, and when Columbus went to his meals he took the key, leaving the box in Dameron's custody. Columbus and Jefferson, the other two commissioners, being colored men, did not take their meals at the same place Dameron did.

Waiving for the present the minute circumstantiality with which Dameron relates the strict and scrupulously conscientious guard kept over the ballot-box from the time they left the voting place until they reached Vidalia, and until the votes were counted, one of the commissioners riding in front of the buggy and the other in the rear (why this singular disposition of forces was made not being explained), one taking the key and the other the box after they got to Vidalia, and at no time after their arrival there the ballot-box and the key being suffered for a moment to remain in the hands of the same person, although, on the way to Vidalia, Dameron seems to have had both box and key in his ride in the buggy with Irvin; waiving all this, let us come at once to the cause assigned, to the reason given, for the total disregard of the law in leaving the voting place without counting the votes, and making a nocturnal trip of sixteen miles, riding till midnight and counting the votes at a place different from that designated by law for them to be counted.

On this point Dameron says:

When the polls were closed the other two commissioners *refused to open and count the votes at the polls*, they saying the box ought to be taken to Vidalia and the votes counted there. Not having the book of instructions for holding the elections, I acquiesced in their wishes.

It is very clear from the statement of Dameron that the question was discussed as to whether the votes should be counted at the polls or not, and that Dameron had the idea that they should be counted there, but was overruled by the other two commissioners, who refused to count them there. But the other two commissioners flatly contradict Dameron, and say that they did *not* refuse to count the vote at the voting place. R. H. Columbus says he has carefully examined Dameron's statement and fully confirms the same, with this exception: "I made no objection to the opening and counting the votes at the polls."

E. D. Jefferson, the other commissioner, confirms Dameron in every particular except the following: "*I made no objection to opening and counting the votes at the polls*, but stated I had served as commissioner of election before, and always took the boxes to Vidalia to count them, and we had no instruction-book to guide us, and I did not know what else to do, believing that to be the law. I had left the instruction-book at home, having forgotten to take it with me."

Now, Dameron says that both Jefferson and Columbus "*refused*" to open and count the votes at the polls, and not having any instruction-book he yielded to their wishes. They both deny having made any such refusal. Just what the precise truth is on this point, it is difficult to determine with certainty. For the present, let us assume that, in ignorance of the law and without bad faith, the ballot-box was transported sixteen miles in the night-time, and the votes counted at a place different from where they were cast, and not in the presence of such of the voters as saw fit to witness the counting. Were they correctly counted?

Dameron says (and his statements are confirmed in every respect by his two co-commissioners, Columbus and Jefferson, except in the particular already noticed), "In counting the votes, the tally-lists were kept by different persons—part of the time by Mr. Connell, part of the time by Mr. Joyce, and part of the time by Mr. Nutt. The tally-sheets were kept under the direction and supervision of the commissioners. There were in said box, and returned by said commissioners, 441 votes for Frank Morey for member of Congress for fifth district, and 37 votes for William B. Spencer for member of Congress for fifth district of Louisiana. * * I am neither a Democratn or Republican, but am an Old-Line Whig. The other two commissioners were Republicans. I was not considered to be a Republican. The labor of counting the votes was very considerable, as it was a general election, and quite a number of candidates voted for. I only heard two candidates make objection to our mode and manner of counting. No objection by anybody else was made to me. * * * I don't think the tally-lists were very regularly kept, as we had no regular tally-keepers and had to pick them up as we could get them. I believe the tally-lists were kept as correctly as they could have been kept under the circumstances." Witness further says he voted for Spencer for Congress.

Whatever may be thought as to whether those portions of the law are mandatory or directory which require the votes to be counted at the place where they are polled, without removing the ballot-box, in the presence of such voters as may see fit to witness the count, and the commissioners to make their return to the supervisor of the parish in twenty-four hours after the close of the polls—all of which provisions were intentionally violated or ignorantly disregarded by the commis-

sioners—we assume that there can be no two opinions on the proposition that that part of the law which requires the commissioners to make a correct count of the votes cast is certainly imperative. Before entering upon their duties, as we have seen, they are required to swear that they will "carefully and honestly canvass" the votes. How were the votes at this box counted? How did these commissioners discharge their duty in this respect?

The keeper of the tally-list, to all intents and purposes, makes the only record from which the votes can be counted. If his list is correct, the number of votes cast can be correctly ascertained; if his list is erroneous, the returns based on it are necessarily incorrect. The tally-keeper is, then, the party who counts the votes. The marks he makes on the paper determine how many votes each candidate has received. It is not pretended, and indeed cannot be, that these commissioners had any other mode or means of determining the result of the election than from the tally-sheets kept by parties "picked up"—to use Dameron's expression—at random in the court-house to tally the vote. Can sworn commissioners, whom the law places around the ballot-box as guardians of its purity, and charges with the duty of "carefully and honestly" canvassing the votes at an election, delegate to unsworn and irresponsible parties the delicate task which the law imposes upon them alone? The law of Louisiana expressly requires tally-sheets to be kept; and when properly kept they are authority upon the state of the vote. Says McCrary, in his Law of Elections, sec. 291:

"In the case last named, it was held that the tally-sheet *kept by the officers of the election* is competent evidence, in an election contest, to show the true state of the vote. It is good until impeached, and affords *prima-facie* evidence of the votes cast for such candidate." This gives to the tally-sheet kept by *officers of the election* the same dignity and authority as the returns themselves, and properly so; for the returns are based on the tally-sheets, and unless the latter are correct the former cannot possibly be so, or import verity. Who were Connell, Joyce, and Nutt, the three parties picked up in the court-house to work upon these tally-sheets? All we know of them is their names. They were not officers of the election, and were not sworn to discharge their duties faithfully. By the law of Louisiana it is made a felony for any person not an officer of election to assume to act as such in receiving or counting votes, or doing any other act toward the holding or conducting elections, or making returns thereof; clearly prohibiting all *unofficial* hands from touching anything connected with holding elections or counting the votes. No legal presumption of correctness attaches to *their* acts. If the tally-sheets kept by them can stand at all, they must stand on extrinsic evidence of their truth, as they can lean on no legal presumption for support. It is no extenuation of such a proceeding as this for witnesses to swear, as Dameron does, that the election was all fair. Of what avail is a fair election with a dishonest or uncertain count of the votes? In vain may the law require illegal votes to be excluded, a correct list of voters to be kept, intimidation and bribery to be punished, if, after a fair election has been held, and each voter has exercised his high privilege of voting according to his own choice, the sworn officers of the election shall be allowed to turn over to idle loungers the duty of keeping the tally-sheet, where fraud can be so easily committed and with such difficulty detected. The election-law which would tolerate such a proceeding would be a mockery, and such conduct on the part of officers of election, if sanctioned, would, in the opinion of this committee, open wide the door to fraud

and be a dangerous precedent. But, in addition to the absence of any legal presumption to support such a count, Dameron says, in positive disparagement of the manner in which the tally-sheets were kept, "I don't think the tally-lists were very regularly kept, as we had no regular tally-keepers, and had to pick them up as we could get them. I believe the tally-lists were kept as correctly as they could have been kept under the circumstances." Not "*very* regularly kept," but "I *believe*" they were "*as correctly kept as they could have been kept under the circumstances!*" The law required him and his co-commissioners to keep them regularly. They had been sworn to do so, and they were required to know of their own personal knowledge that they were correctly kept, and yet this sworn officer admits they were not very regularly kept, but excuses the irregular manner in which they *were* kept by saying the commissioners *had to pick up* such persons as they could get to keep them. Why did they have to pick up anybody to discharge a duty which the law imposed on them and them alone? And he *believes* they were as correctly kept as they could have been under the circumstances. Under what circumstances? He must mean as correctly as Dick, Tom, and Harry, the idlers about the room, would be likely to perform such a task. It is true Dameron says these tally-sheets were kept by the direction and under the supervision of the commissioners. But it is very clear from his admission that he has no knowledge as to whether those tally-sheets spoke the truth or not. He does not pretend to say whether the number on the tally-sheets corresponded with the number of ballots in the box, and much less could he have told whether the keepers of the tally-sheets correctly credited each candidate with the votes he received. No effort whatever was made to verify the tally-sheets; and the men who kept them, Connell, Joyce, and Nutt, are not even called to prove that they did their work correctly. It is very clear from Dameron's statement that the work of tallying the votes was confided to the irresponsible men called by the commissioners to do it, and that no such supervision as the commissioners *seeing* and *knowing for themselves* that the tally-sheets were correctly kept was exercised by them. It is true Dameron further says: "I only heard two candidates make objections to our mode and manner of counting." But it can make no difference how many candidates he may have heard object to it. The commissioners disregarded an imperative provision of the law without the observance of which there can be no safety or certainty in elections.

The integrity of their returns and their *prima-facie* character are therefore destroyed. There being no proof outside of the returns of the vote of this ward or poll, it must be excluded from the count.

### CARROLL PARISH.

Generally, in reference to the election in this parish, contestant alleges that at none of the voting places in said parish were the votes correctly counted or returns made and sworn to as the law directs, but, on the contrary, the partisans of contestee at once seized upon all the ballot-boxes, with the ballots, lists of voters, and other papers, concealed, and still conceal them, in order to facilitate their unlawful purpose of falsifying the same. Other and specific charges are made in reference to particular wards in the parish, which will be noticed more appropriately in the separate consideration hereafter to be given to such wards.

Contestee in general terms claims to have received the majority of votes credited to him in Carroll Parish by the board of returning offi-

cers; that the election in said parish was conducted according to law, and that whatever irregularities may have occurred in the election in said parish, they were not of a character to vitiate or avoid the election.

Contestant offers in evidence in this cause, a record in the cause of Burton *et al. v.* Hicks *et al.*, a proceeding instituted by certain parties who were voted for, the State or county officers at the election in Carroll Parish on 2d November, 1874, to test the validity of said election. To this suit neither contestant nor contestee is a party. Contestee objects to the introduction of said record in this cause because it is *res inter alios acta.* It is true the validity of the same election at which contestant and contestee were voted for is involved in the cause, yet neither of them being parties to the same can be bound thereby. We therefore sustain the objection to the introduction of the record, and exclude it as evidence in this case.

*First ward.*

The only returns produced of the election at this poll is a paper purporting to be signed and sworn to by the three commissioners, David Jackson, T. B. Rhodes, and E. M. Spann. This paper is produced by the witness, R. K. Anderson, on his examination, who seems to have been a commissioner of election at ward 3, in Carroll Parish, and to have had no connection whatever with ward No. 1. Says he received it from the clerk of the court. How the clerk came to give it to him, how long he had it in his custody, are questions on which Mr. Anderson furnishes no information, and on which, strange to say, neither the contestant nor contestee ask him to furnish any. The election took place in November, 1874. As has been already seen, it was by law made the duty of the commissioners of election within twenty-four hours after the close of the polls to deposit the ballot-box containing the ballots, and also to deposit the returns of the election, in the office of the clerk of the district court. How Anderson happened to have the paper produced by him in April, 1875, nearly six months after the election, when his deposition was taken, neither he nor any other witness explains, or is asked by either party to explain, except the mere statement of Anderson that he received it from the clerk. E. M. Spann, one of the commissioners, is asked what was done with the ballot-box, the returns, and other papers pertaining to the election. He says that he and David Jackson, another commissioner, took them to Providence, the parish site, and deposited them in the office of the clerk of the court, all except the returns, one copy of which was left *with the clerk of the court*, and another given to the supervisor of registration of the parish. David Jackson, it will be noted, was himself the clerk of the court, in whose office, according to Spann's statement, the ballot-box and other papers were deposited, and *with whom* one copy of the returns was left.

T. I. Galbreth says he has been the principal deputy clerk of that court, and as such has had entire control of the office since July 26, 1873. He swears there have never been on deposit in that office any ballot-boxes, returns, or other papers pertaining to the election *from any of the wards in the entire parish*, except a tally-sheet handed to him by a commissioner of the First ward, which was afterward taken out of his office and carried away. He further says that diligent search has been made by himself and others for those ballot-boxes and papers, but they cannot be found, and he does not know where they are.

This is certainly a most extraordinary state of affairs, that for not a

single ward in an entire parish can the evidence that an election was held in the parish be found in the office where the law says such evidence shall be deposited. It suggests a demoralization and laxity, to use no stronger terms, on the part of sworn officials most discouraging to contemplate.

Can the testimony of Spann, the commissioner, and Galbreth, the deputy clerk, be harmonized? One swears that the ballot-box from this district was deposited in the clerk's office, and the other that no such deposit was ever made. If such a deposit was made, Jackson, one of the commissioners, and the clerk of the court, certainly knew it; for Spann says he and Jackson went together to the office and left the ballot-box and papers pertaining to the election there. It is possible that Jackson may have abstracted the ballot-box and papers from the office before Galbreth saw them, and never communicated to his deputy the fact that they had been placed in the office. This hypothesis would reconcile the conflicting statements of Spann and Galbreth, but it is only a hypothesis. The proof is silent on the point.

The deposition of Jackson is taken in the case, and not a word is asked him by either party about the ballot-box and returns from this or any other poll in the parish; nor is he asked what he did with the duplicate return from ward No. 1, which was left in his possession by Spann at the time the ballot-box and election-papers were deposited in the office. The failure to interrogate Anderson as to when or where or for what reason Jackson, the clerk, gave him the paper which he produced on his examination as the duplicate return of ward No. 1, or to interrogate Jackson as to what became of the return from said ward left in his possession by Spann, or of the ballot-box and election-papers which Spann says he and Jackson together deposited in Jackson's office, is exceedingly strange.

But we must proceed as best we can by the light given. The paper produced by Anderson seems on its face to be in due and proper form as a return. The names of the persons voted for, the number of votes received by each, the position for which each was supported, the whole number of votes cast, the number rejected, and the reasons given therefor, are all stated, and, as before shown, the paper duly signed and sworn to by the three commissioners. The depositions of Spann, Rhodes, and Jackson, the commissioners, are taken, the paper produced by Anderson exhibited to them, and they all swear positively that the paper shown them is the original of one of the duplicate returns made out and sworn to by them after the election, and that it contains a true statement of the result of that election.

The question arises, can this paper be received and treated as a legal return of the election held at this ward on the facts disclosed in the record, some of which have been already adverted to, and some of which will be noticed hereafter?

If we assume, according to the statement of Spann, that the ballot-box and election-papers were properly deposited in the office of the clerk, it would seem a hardship to make the candidates for office suffer the consequences of a loss by fraud, in which they had no agency, and for which they are not, therefore, responsible. On the other hand, it might appear dangerous to allow a paper to stand as a valid return which comes from the pocket of a party not entitled to its custody, his possession of it unexplained, and the paper unaccompanied by its legal companions, the ballots, tally-sheets, &c., and no account given of their whereabouts, or how they happened to disappear entirely, while the returns are permitted to see the light when an election contest comes

up. The law, as before shown, requires that after the ballots are counted they shall be replaced in the box, and the returns and the ballot-box shall be deposited in the clerk's office. By the ballots the truth of the returns can be tested and their correctness verified. A paper purporting to be the returns comes to light unexpectedly from a depository unauthorized by law, but the written evidence provided by law to test its accuracy, in case of a dispute or a contest, is missing. But there are other infirmative considerations which enter into the question as to whether this paper shall be received and treated as a legal return.

Burton, the ex-sheriff of Carroll Parish, swears that he detected David Jackson, the commissioner who received the ballots from the voters on the day of election, changing the votes handed him by the electors for others which he put into the box instead of the ballots of the voters. He says he charged him with it and complained to him of its unfairness. "He (Jackson) tried to bluff me out of it, but I showed him the tickets he had dropped lying on the floor." On cross-examination, Burton says he could not swear to more than one ticket, which he saw Jackson change, but there was another on the floor in the same position, but he does not know that this one was changed. Jackson is not recalled, nor did contestee offer to recall him to deny this statement.

Cæsar Jones and Noah Lane both swear that they saw Jackson hand greenbacks out at the window to voters. Lane says he saw him do it several times. Jones says he saw him pass money out to voters several times with their registration tickets as they were returned. Jackson denies having handed out any money to voters, and swears he would not believe Cæsar Jones on oath. But J. C. Purdy, a merchant of Providence, Carroll Parish, on being asked whether he knew Cæsar Jones, and what his character is, replies, "Yes; I know him well, and have known him well for seven years. I consider him as honest a man as there is in the parish, and a truthful man." Andrew Cunningham also sustains the good character of Cæsar Jones. Burton stands unimpeached; so does Lane and so does Johnson, except by the testimony of Jackson, to whose corrupt conduct Johnson had testified. If the wrong-doer or criminal can elude detection or punishment by swearing that he would not believe the witness who inculpates him, on oath, the way of escape would be made easy.

It is true the other two commissioners and some of the bystanders swear that the election was fair and free from fraud; but none of them are asked and none of them speak of or deny the specific facts testified to by Johnson, Lane, and Burton—except Spann says he does not recollect hearing Burton making any charge of unfairness while the voting was in progress, but that Burton complained of being defrauded of a few votes while the counting was going on. So far as the testimony of bystanders to the fairness and freedom from fraud of the election is concerned, it will be seen hereafter that it was conducted in a manner not very favorable for the detection on the part of spectators of any fraud that a commissioner might see fit to perpetrate. Furthermore, in reference to this man Jackson, it is incredible that all the returns and ballot-boxes from the entire parish of Carroll could have disappeared without his knowledge or connivance. We cannot suppose that all the commissioners in the entire parish failed, in total disregard of the law, to carry the 25 ballot-boxes and returns to the office of the clerk. He was the clerk. He fails to state in his testimony anything whatever about the ballot-boxes or returns from the different wards which the law required

to be deposited in his office; and the returns from ward No. 1, which is proven to have been in his custody, he is proven to have given to a party not entitled to its custody. Under these circumstances his name can add no validity to any returns on which it may be found, but stands dishonored. McCrary, in his Law of Elections, says (section 441), "If, for example, an election-officer, having charge of a ballot-box prior to or during its canvass, is caught in the act of abstracting certain ballots and substituting others, although the number shown to have been abstracted be not sufficient to change the result, *yet no confidence can be placed in the contents of a ballot-box which has been in his custody.*" It may be said that the names of the other two commissioners being to the return makes it sufficient and valid as a return. It is true, as a general rule, when the law requires a certificate to be made by a board of officers composed of three or more persons, it is sufficient, if a majority of such board join in the certificate; but this rule was never intended to be applied, nor could it be properly applied, to a case where one of them had been guilty of fraudulent acts. Who can tell how far the fraudulent acts of Jackson entered into that election? It is impossible to tell; just as impossible as it would be, if poison were dropped into a basin of water, to select the drops infected from those that remained pure. The good faith of the other two commissioners cannot purge the ballot-box of Jackson's fraud. It is for this reason that the law holds, and wisely and justly holds, that fraud vitiates everything into which it enters. It is for this reason that McCrary says that no confidence can be placed in the contents of a ballot-box which has been in the custody of an officer detected in the perpetration of a deliberate fraud. This position is strengthened in this case from the fact that the ballot-box, for a great portion of the day, was placed in a room through the window of which the votes were received. This window was six feet from the ground. The weight of proof shows that the voter could not see what became of his ballot when he reached it up to the window to the commissioner with his hand or on the end of a stick, nor could the commissioners see the voter. The law required that the commissioner should put the ballot in the box in plain view of the voter. The object of this provision was to prevent just such fraud as Jackson was detected in perpetrating. The law further gives the voter the right to deposit his ballot in the box with his own hand. This box was placed beyond his reach, and he was practically denied thereby this right. The law not only contemplated that the voter should see the commissioner, and what he did with the ballot when handed to him, but that the commissioner should see the voter in order to prevent another species of fraud which is shown to have been practiced at this box. Burton says he saw one Cain Sartain, a candidate for the legislature, hand up four or five ballots to the commissioner. He spoke to Sartain about it, when he claimed that he handed the ballots up at the request of voters, and said he could produce the men who had requested him to hand up their votes, and went off as if in search of them, but did not return. Sartain is not introduced to contradict this statement of Burton. It is very clear, if commissioners are allowed to hold an election out of sight of the voters, that such frauds could be perpetrated to any extent. One man might obtain the proxy of fifty and put fifty ballots in the box without the knowledge of commissioners who were situated where they could not see him. Upon the whole, we conclude that the paper produced by Anderson cannot be received as a valid return, and therefore reject it as such. There being no proof aliunde of the vote at this poll, it must be excluded.

*Second ward.*

No return whatever seems to have been made from this poll. W. W. Benham, one of the commissioners, swears that the return was made out, duly signed, and sworn to by the commissioners. Mr. Montgomery, another commissioner, swears that he signed and swore to the poll-list, but did not sign or swear to any returns at all. Murray, the other commissioner, does not testify at all. What purported to be returns from this poll was placed before the State returning-board at New Orleans, are duly signed and sworn to by the commissioners. Montgomery says his name to said returns is a forgery, as he never signed any. Lackey, the parish supervisor of registration, says that said returns were not placed before said board by him or by his authority. Benham admits that he delivered said returns to the State board. He was the clerk of Lackey, the supervisor, and is clearly the author of the forged returns which were sent to the State board. The evidence leaves no doubt that all the commissioners at this poll failed to sign any returns at all. "If the proper officers omit altogether to sign a return, though it may be otherwise formal, it is void and proves nothing." (McCrary on Elections, sec. 274, sec. 174; Chrisman *vs.* Anderson, 1 Bartlett, 328; Adams *vs.* Barnes, 2 Bartlett, 760.) The result of the election at this ward must then be sought from other sources than the returns.

The poll-list was duly signed and sworn to by the commissioners. It therefore furnished the names of the voters, and their depositions could have been taken to show how each man voted. But not a single voter is called to prove for whom he voted. Benham, the author of the forged returns that were placed before the State board, swears that "upon summing up the tally-sheets on the Congressional vote, there was found to be three or four votes less on the Congressional vote than the number of votes shown by the list. The vote for Spencer was either forty-nine or fifty, and the balance of the vote, less the three or four who did not vote for Congress, was the vote received by Frank Morey, six hundred and sixty or six hundred and sixty-one." Benham called the votes from the tickets from which the tally-sheets were kept. He says, "Blount, the Democratic United States supervisor of election, stood over the ballot-box with me and saw by the tickets as I held them in my hand that they were called just as they were printed or written." Blount says the statement of Benham is not correct. He says, "I was absent about half an hour of the time on Tuesday morning. When we first commenced counting the votes I watched it very closely for an hour or two; afterwards I remained in the room, but did not all the time inspect the votes as they were called." He says he does not know whether Benham called the votes correctly or not. Blount further says he was not permitted to see the tally-sheets, votes, or returns of Carroll Parish; that he waited around the office of the supervisor of registration and asked many times to see them, but did not succeed in getting to see them at all. He says he saw the talley-sheets of ward No. 2, on Tuesday night, after the votes in the box were called, and figured out from them sixty-five votes for Spencer, but says he thinks from the list of voters and his knowledge of the persons voting that Spencer got more than sixty-five votes.

W. B. Dickey says he thinks the entire number of votes cast at this poll was 719. Spencer received 49, and Morey 664 or 665. Benham says there were 713 votes cast in all, as shown by the list of voters. B. H. Lanier says, according to the best of his recollection, the entire vote for Congressional candidate was something over 700. He *thinks*

Spencer received 48, 49, or 50 votes, and Morey the balance of the total vote.

Montgomery, one of the commissioners, does not remember, and does not undertake to state the number of votes received by either Spencer or Morey. The above is all the evidence to show the result of the election at this poll. Although not differing very widely in their figures, no two of the witnesses agree as to the number of votes cast or the number received by each candidate. The uncertain memory of two or three witnesses as to the result of an election six months after it took place cannot be permitted to take the place of the testimony of the voters themselves, and in this case, to the frailty of memory are added the uncertainty and unreliability of the source from which the facts to be remembered were derived. Montgomery says W. B. Dickey, M. A. Sweet, J. D. Therrell, and S. T. Austin kept the tally-list, by consent and request of the commissioners, alternately, while keeping the lists to relieve each other. The habit of officers of election in calling in unsworn by-standers to keep tally-lists, and thus virtually to count the vote has been already alluded to and animadverted upon in considering the vote at poll 5, Concordia Parish, and need not be here repeated. Benham, who is contradicted in several essential particulars in the testimony given in this cause, and who is shown to be the author of the forged returns that were delivered to the State board, occupied the important position of calling out the votes from the tickets to unsworn tally-keepers, and it is from this source that Dickey and other witnesses, who speak of the result of the election, get their information. There are other objections made to the vote at this poll, but as enough has already been stated to show that there are no reliable data from which the result can be ascertained, it is deemed unnecessary to further prolong the examination. The vote cannot therefore be counted.

*Third ward.*

This poll is also without any returns. It seems from the testimony of R. K. Anderson that the returns were not made in duplicate at this poll, but only one set was made out, which was delivered to the supervisor of registration, at Providence, the parish site. What became of the returns afterward is not disclosed. He says his recollection is there were 550 votes cast in all; 7 were cast for Spencer, two blanks as to members of Congress, and the balance for Morey. This witness Anderson is the same individual who produced from his pocket what purported to be the returns from ward No. 1, of Carroll Parish, and whose testimony is referred to in that portion of this report relating to ward No. 1. The deposition of Dubb Anderson, another commissioner, is not taken. R. K. Anderson says the election at this poll was peaceable and fair, and generally conceded by both parties to be so. P. Jones York says the election was peaceable and orderly, and as fair an election as he ever saw; does not recollect the exact number of votes cast, but there were between five and six hundred cast; says they were nearly all cast for Morey, and Spencer got only a part of the democratic votes cast. This witness does not undertake to state more definitely the result. John Scott, another witness for contestee, was asked if the election was not conducted fairly at this poll; he answers, "It was; all but two things which I did not think was right, to wit, that the tickets of some of our men, the Gla men, were taken away from them and torn up by the Benham men; and Captain Anderson, one of the commissioners, opened the tickets and looked at them before putting them in the box, sometimes pushing them in the box with the ink end, and sometimes

with the other end of his pen." Says there were two factions of the Republican party, the Gla and Benham factions. Says he believes most of both factions supported Morey.

R. M. Bagley, another witness for contestee, and one of the commissioners at this poll, says the election was conducted very loosely; that the law in many instances was not complied with; that there were many charges of unfairness which he, as a commissioner, attempted to correct, but was overruled; there was some disturbance between contending parties, especially among the constables, who were very partisan, all belonging to the same side; candidates were allowed to keep the tally-sheets; but he says the tally-sheet which he, witness, kept was the one from which the return was made up; says parties were allowed to vote who were under age, and others who had not proper registration certificates; saw one man have nearly all his clothes torn off by parties endeavoring to get him to vote as they wished. The man afterwards told witness he would have voted differently, but was afraid. Witness says he saw in the office of the State returning-board his name to what purported to be returns of poll No. 3 of Carroll Parish, and his signature thereto was a forgery; says he does not remember the vote of Morey and Spencer well enough to swear to it. Witness is asked if he did not make affidavit, which affidavit was before the State returning-board, in which he stated the exact number of votes given for Morey and Spencer at poll No. 3; says he knows he made an affidavit before the returning-board, and thinks, though he is not positive, that he stated therein the vote for Morey and Spencer; that his statement in that affidavit, whatever it was, is correct. An affidavit made by Bagley before the clerk of third district court of New Orleans is given at pages 76–7 of the record, in which he swears that on the 28th November, 1874 (the affidavit bearing the same date), he was present before the State returning-board, and saw his name to what purported to be a return of the election of poll No. 3 of Carroll Parish, and his signature thereto is a forgery. This affidavit contains no statement of the vote of Morey and Spencer.

Mr. Aroyo, in the protest which he filed to the action of the returning-board in receiving the returns from Carroll Parish, recites that R. M. Bagley made an affidavit before the returning-board that Morey received 510 votes, and Spencer 7. Mr. Aroyo in his deposition says that Spencer, Montgomery, and Bagley read affidavits before the board, stating the number of votes cast in their respective polls, and if there was any other statement it was false, and their signatures thereto forgeries. F. C. Zacherie also says that the above three commissioners made affidavits, swearing that "such and such results had been the issue of the election held at their polls."

Now, it will be seen that R. K. Anderson is the only witness who undertakes to state the result of the vote at this poll. He says his recollection is there were 550 votes cast in all; says he speaks *from memory* as to the total vote cast, but is positive as to Spencer having received only 7 votes; that there were two blanks, and that Morey received the balance. If he does not speak from memory also in regard to the vote of Spencer and Morey, he fails to disclose what other means he had of knowing it.

Bagley does not know whether he stated the number of votes for Spencer and Morey or not in his affidavit before the board. Aroyo, in his protest, says he did; and Zacherie says the three commissioners—Spann, Montgomery, and Bagley—made affidavits, stating its result *at their* respective polls, but he does not give what their affidavits stated

the result to be. If Bagley made such an affidavit at all—which is not free from doubt—certainly the affidavit itself is the best and most reliable evidence of what it contains, and not Mr. Aroyo's recollection of its contents. No such affidavit is produced, and no reason given for its non-production. Being *ex parte*, it is by no means certain that it could be looked to by the committee as evidence in this case. But taking the statement of Aroyo as to the contents of the affidavit, to wit, that Morey received 510 votes and Spencer 7, let us see how this agrees with the recollection of Anderson as to the vote received by Morey and Spencer at this poll. He says there were, according to his recollection, 550 votes cast in all. Of this number Spencer received 7; there were two blanks, and Morey received the balance. This would give Morey 541 votes—31 votes more than, according to Aroyo, Bagley's affidavit before the returning-board gave him. This illustrates the danger of accepting the uncertain recollection of witnesses as to the result of an election months after it has transpired, when the voters themselves could have been called to testify and show the result with certainty. The committee do not hold that the testimony of the voters is the only evidence of the result of an election in the absence of returns, but decide that the testimony adduced in this case to show the vote at ward No. 3 is insufficient for that purpose, and that the vote there, therefore, and perhaps for other reasons also, cannot be counted.

*Fourth ward.*

Some objections were made to the entire correctness of the returns on file in the returning-board as to this ward, but as they have not been seriously pressed in argument, and as the result cannot be changed by this vote, we deem it unnecessary to encumber this report with a discussion of the points made, and therefore count the vote as stated in the returns, which give Morey 167 and Spencer 74 votes.

*Fifth ward.*

There seems to be no evidence impeaching the return at this ward, which gives Spencer 108 and Morey 96 votes.

STATEMENT OF THE RESULT.

We have already seen that, excluding the contested territory, Spencer had, by agreement of the parties, a majority of 1,396. The fifth ward of Concordia Parish, and the first, second, and third wards of Carroll Parish, being excluded by this report, that majority still stands, to be affected only by the vote at the fourth and fifth wards of Carroll Parish. Adding to the majority (1,396) with which Spencer entered the contested territory, the majority of 12, which he received at the fifth ward, would make his majority 1,408, from which is to be deducted 93 votes, the majority received by Morey at the fourth ward, thus electing Spencer by a majority of 1,315 votes.

The committee, therefore, recommend the adoption of the following resolutions:

*Resolved*, That Frank Morey was not elected and is not entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

*Resolved*, That Wm. B. Spencer was elected and is entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

JNO. F. HOUSE.
GEO. M. BEEBE.
JOHN T. HARRIS.
CHARLES P. THOMPSON.
JO. C. S. BLACKBURN.
E. F. POPPLETON.
R. A. DEBOLT.

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VIEWS OF THE MINORITY.

Mr. G. Wiley Wells, from the Committee on Elections, submitted the following as the views of the minority:

*The undersigned, a minority of the Committee on Elections in the case of William B. Spencer, contesting the seat now held by Frank Morey, of the State of Louisiana, respectfully report:*

That upon an examination of the evidence in this case we find that the contest between contestant and contestee is narrowed down to two single parishes in the fifth Congressional district, viz:

Concordia Parish, poll 5, and—

Carroll Parish entire.

We are, therefore, relieved from any investigation outside of these two parishes. We find that the fifth district is composed of fourteen parishes. The vote, by majorities, outside of these two parishes, as conceded by contestant and contestee, is as follows:

| | |
|---|---|
| Majority for Spencer in— | |
| Caldwell Parish | 139 |
| Catahoula | 96 |
| Claiborne | 712 |
| Franklin | 405 |
| Jackson | 440 |
| Lincoln | 389 |
| Richland | 293 |
| Union | 716 |
| Tensas | 754 |
| Which gives Spencer a total majority, as conceded, of | 3,944 |
| It is further conceded that Morey's majority in Madison Parish is | 560 |
| Morehouse Parish | 337 |
| Ouachita | 943 |
| | 1,840 |
| To which must be added Concordia Parish | 708 |
| Which is the majority conceded by Spencer, but which, on the count, excludes poll 5 of Concordia Parish, which gives Morey a conceded majority of | 2,548 |

Take from the majority conceded Spencer, viz, 3,944, the total majority conceded Morey, viz, 2,548, and it will leave a majority for Spencer of 1,396.

This leaves for the committee outside, as before stated, to decide what vote was polled at the fifth poll, Vaucluse, in Concordia Parish, and what vote was polled in Carroll Parish, and whether they shall be

counted or rejected. In examining the case and discussing the same, we shall proceed in the order in which the counsel presented the same to the committee, and therefore first consider the fifth poll, Vaucluse, Concordia Parish.

The grounds claimed by contestant, in his notice, for excluding the fifth poll of Concordia Parish, are: "The election laws of Louisiana require that the ballot-boxes shall be opened at the polling places as soon as the voting is over, in presence of the public, and the votes counted publicly, and returns made within twenty-four hours after the closing of the polls. At said fifth poll the commissioners of election refused to open and count the votes at the polling-place, but, on the contrary, they took the ballot-box late at night and carried it away to Vidalia, a distance of 15 miles, and went into a private apartment, and counted the votes out of the presence of the public, and made no returns thereof for two days after the election, all of which constitute presumptive evidence of fraud and wrong."

The contestee, in his answer, claims "That he received the number of votes and the majority of votes which, by the returns of the commissioners of election of poll 5, parish of Concordia, and by the returns of the board of returning-officers of the election [he] is credited with having received. * * * And, further, [he] claims that whatever may have been *informal* and *irregular* in the instances specified in [Spencer's] notice relative to the matter of registration and the conduct of the election held November 2, 1874, in the district aforesaid, such informalities or irregularities were not in [his] interest, but adverse, and they were not of a character to vitiate the election nor to prevent a fair election; nor did they materially and injuriously affect the number of votes received by contestant, nor lead to a larger count of votes for [him] than [he] received and was entitled to be credited with; and all of which facts he alleges are susceptible of proof."

We find that all the evidence adduced by contestant and contestee in reference to poll 5, Concordia Parish, is found on pages 25 and 27 of record, and is as follows:

As to fifth poll, parish of Concordia, we give *all* the testimony taken relating thereto:

*Testimony of John F. Dameron* (p. 25).

JOHN F. DAMERON, sworn for both parties, says:

At the general election held on 2d November, 1874, I was at the Vaucluse poll, fifth ward, Concordia Parish, and acting at said poll as a commissioner of election. Robert H. Columbus and Thomas E. D. Jefferson were the other two commissioners at said poll, and William C. Yarger United States supervisor at that poll. When the polls were closed on that day, between 6 and 7 o'clock p. m., *the box was locked; I took the key in my possession, giving the box to Robert H. Columbus.* We started for Vidalia, the parish-seat of Concordia, distant about sixteen miles. Upon reaching the store of T. C. Witherspoon, on the road to Vidalia, the suggestion was made that I should take the box and ride in a buggy from there to Vidalia, which suggestion I acceded to, and came on to Vidalia in company with Irvine, in his buggy, one of the other commissioners riding in front and one in rear of the buggy on horseback. Coming on without any interruption, we reached Vidalia between 11 and 12 o'clock that night, and proceeded to the office of Burnett Hitchcock, tax-collector, upstairs in the court-house at Vidalia. We then and there opened the box, and proceeded to the counting of the votes, up to half past 2 o'clock a. m. of the 3d of November. *When we closed the box, I locked it, and gave the key to Thomas H. Columbus, taking the box with me, in company with William C. Yarger, United States supervisor, to the hotel in Vidalia.* Putting the box under my bed in the room of the hotel, we went to sleep and slept till about 7½ or 8 o'clock in the morning. We then got up to breakfast, I taking the box with me to the table. After finishing breakfast, we went to the court-house, to Mr. Hitchcock's room, again. Opening the box, we proceeded again to count the votes. After thus counting some time in Mr. Hitchcock's room, we closed the box and moved down stairs into the court-room, where we proceeded until the count was completed. *The reason we did not go to the court-room at first was that, on arriving at Vidalia, we found the court-room occupied by the commissioners*

*of the Vidalia ward or precinct.* We completed our returns on the night of the 3d November, between 10 and 11 o'clock, and made our returns to supervisor of the parish on the next day, 4th November, between 12 m. and 1 o'clock p. m. In counting the votes the tally-lists were kept by different persons, part of the time by Mr. Connell, part of the time by Mr. Joyce, and part of the time by Mr. Nutt. The tally-lists were kept under the direction and supervision of the commissioners. There were in said box and returned by said commissioners 441 *votes for Frank Morey for member of Congress for fifth district, and* 37 *votes for William B. Spencer for member of Congress for fifth district of Louisiana.*

During the night of 2d November, when we were counting the votes in Mr. Hitchcock's room, there were present, besides the commissioners, several persons, among whom was a candidate for police juror and a candidate for magistrate of the fifth ward. Mr. Hitchcock's office was considered a public office, and any person during the time we were counting was privileged to come in. It was not a public office except for purposes of tax-collecting; and Mr. Ault, the deputy collector, gave us permission to use it. *When I went to my meals during the time of counting, I left the court-room in charge of Mr. Columbus, one of the commissioners, and took the key myself, and when he went to his meals, he took the key and left me in charge of the box.* The other commissioners did not take their meals at the same house with me, they being colored men. *I am neither a Democrat nor a Republican, but am an old-line Whig.* The other two commissioners were Republicans. *I was considered to be a Republican.* The labor of counting the votes was very considerable, as it was a general election and quite a number of candidates voted for. I only heard two candidates make objection to our mode and manner of counting. No objection by anybody else was made to me. The votes cast at this fifth-ward box were counted and returned by the supervisor, as between all the candidates at said election. I don't think the tally-lists were very regularly kept, as we had no regular tally-keepers, and had to pick them up as we could get them. I believe the tally-lists were kept as correctly as they could have been kept under the circumstances.

I omitted, in commencing my statement, to mention the circumstances under which the box was removed from the polling-place and the vote not there counted. When the polls closed, the other two commissioners refused to open and count the votes at the polls, *they saying that the box ought to be taken to Vidalia and the votes counted there. Not having the book of instructions for holding the elections, I acquiesced in their wishes.* I will further state that the reason why we suspended the counting of the votes on the night of 2d November was that the commissioners were tired and very much exhausted by the labors of the day and the long ride that night. I voted at said election for Mocum for treasurer, Spencer for Congress, and some Republicans for other offices. *Said election was free and fair.*

JNO. F. DAMERON.

Sworn to and subscribed before me at Vidalia this 6th March, 1875.

J. R. MENG,
*Parish Judge.*

TESTIMONY FOR CONTESTANT.

*Testimony of William C. Yeager.*

WILLIAM C. YEAGER, sworn for plaintiff, says:

I was United States supervisor on 2d November, 1874, at fifth-ward box, in Concordia Parish. *I have carefully read the testimony of John F. Dameron, this day taken and hereinbefore written, and I fully confirm the same, as containing a true and correct statement of the facts relative to the matters stated therein.* As United States supervisor aforesaid, I made a report, setting forth in substance the same facts, to F. A. Woolfley, United States supervisor for the State of Louisiana, immediately after said election.

W. C. YEAGER.

Sworn to and subscribed before me at Vidalia, La., this 25th March, 1875.

J. S. MENG,
*Parish Judge.*

TESTIMONY FOR CONTESTEE.

*Testimony of R. H. Columbus.*

ROBERT H. COLUMBUS, sworn for defendant, says:

I have carefully examined the testimony of John F. Dameron, taken this day in the cause, and hereinbefore written, and I fully confirm his statement of the facts relative to the election at fifth-ward poll of Concordia on 2d November, 1874, *with the following exception I made no objection to the opening and counting of the votes at the polls. Said election was free and fair.*

R. H. COLUMBUS.

Sworn to and subscribed before me this 26th March, 1875, at Vidalia, La.

J. S. MENG,
*Parish Judge.*

*Testimony of Thomas E. D. Jefferson.*

THOMAS E. D. JEFFERSON, sworn for defendant, says:

I have carefully examined the testimony of John F. Dameron, taken this day in this cause, and hereinbefore written, and I fully confirm his statement of the facts relative to the election at fifth-ward poll, Concordia Parish, on 2d November, 1874, with the following qualification and exception, to wit: *I made no objection to opening and counting the votes at the polls, but stated I had served as commissioner of election before, and always took the boxes to Vidalia to count them; and we had no instruction-book to guide us, and I did not know what else to do, believing that to be the law.* I had left the instruction-book at home, having forgotten to take it with me. *The election on that day was free and fair.*

THOS. E. D. JEFFERSON.

Sworn to and subscribed before me at Vidalia this 26th ———, 1875.

J. S. MENG,
*Parish Judge.*

Upon an examination and analysis of this evidence, we find that there is no evidence of fraud or irregularity as to the votes polled at this poll, or as to the conduct of the officers at said polls up to the time of closing the poll, at six or seven o'clock, which would in any way taint it by misconduct or irregularities. But, on the contrary, all the witnesses swear positively that the election was free and fair and honestly conducted; nor was it urged by contestant that any suspicion attached to this poll up to the hour of closing the same. It is, however, urged by contestant that the removal of the box from the voting-place, before the counting of the ballots and the making out of the returns, is sufficient to cause this poll to be excluded or rejected. The evidence establishes the fact, as claimed by contestant in his notice, that the boxes were removed from Vaucluse to Vidalia, the parish-seat of Concordia Parish. The evidence shows that, when the polls were closed, the box was locked, the key given into the possession of the commissioner, who was not a Republican, and who was a friend of contestant, and voted for him; that the box was placed in the custody of one of the other commissioners (Mr. Columbus), and, in company with the third commissioner, the commissioners started, with the box and ballots, to Vidalia, the parish-seat. On their reaching a store on the route to Vidalia, the suggestion was made that Dameron, Spencer's friend should take the box and ride in the buggy, with a Mr. Irvine, to Vidalia. Whether Dameron retained the key or not is left to conjecture. There is no evidence whether he retained it or whether he exchanged the key with Columbus for the box. However, this is immaterial, for the reason that Dameron was contestant's friend, and would have no interest in changing or altering the vote or perpetrating a fraud, excepting in the interest of contestant. Neither has contestant charged, or attempted to prove, that Dameron was in any way guilty of any fraud in connection with the ballots. After Dameron had taken the box into the buggy from the other commissioner, Mr. Columbus, who was on horseback, they then proceeded to Vidalia, the parish-seat, and, in a public office, in presence of whoever might desire to observe the counting, proceeded to count the ballots. The evidence shows that the box was removed under a misapprehension of law. Dameron says that the other commissioners refused to open and count the votes at the polls, they saying that the box should be taken to Vidalia, and the votes counted there. Both of the commissioners contradicted this statement of Dameron. Jefferson says that he made no objection to opening and counting the votes at the polls, but stated that he had served as commissioner of election before, and that he always took the boxes to Vidalia to count the ballots; that he had no book of instructions to guide him, and did not know what else to do, believing that to be

the law. This evidently was concurred in by Dameron, Jefferson, and Columbus, and no other presumption can arise out of this evidence than that they supposed and believed the law required them to go to Vidalia, the parish-seat, and there count the votes, and that this was done by them in order to conform with the law, as they supposed it to be, and not with the intent to commit fraud in connection with the election; especially when we understand that the election laws of Louisiana, in force at the last election prior to this one, and for some time prior thereto, provided that "at the conclusion of the election, at each poll, the boxes containing the ballots shall be securely locked and sealed' and taken immediately by the commissioners of election to the parish-seat, where they shall be counted out by the said commissioners, in the presence of the supervisors of registration and election of the parish." It certainly would be a violent presumption to presume anything else than this from the evidence before us. There is not a scintilla of evidence proving fraud of any kind, nor is any attempt made to prove fraud by contestant, ncr was it urged in argument that any fraud was committed; but it was urged that the mere fact of removing the box gave an opportunity for fraud.

The evidence shows that the box was never out of the hands of the lawful custodians until the votes were counted and the returns made. Until the contestant proves some act showing fraud on the part of the commissioners, or some one of them, or some act from which fraud will be presumed, the law is that their acts must be taken as having been honestly performed. The legal presumption is against fraud on the part of the officers of election, and that nothing but the most unequivocal proof can destroy the credit of official returns. (See Goggin *vs.* Gilmore, 1 Bart., 70; Little *vs.* Robbins, same, p. 130.) The burden of proof is upon contestant to prove the fraud. We do not deem it necessary to cite authorities to establish this legal proposition. We conclude therefore that, as there is no evidence proving fraud, or any evidence from which fraud can be presumed in connection with this box, the committee will not, in the absence of such proof, conclude that because there was an opportunity for fraud that therefore fraud was committed. Certainly this would be a monstrous violation of the legal presumption in regard to legal acts, viz, that all persons are presumed innocent until proven guilty; that officers are presumed to have performed their duties, and to have performed them honestly, and that the mere opportunity to commit a crime, in the absence of other evidence, will not be taken as a presumption to establish the fact that a person committed the crime. The evidence regarding this box, taken all together, does not even raise the presumption of fraud.

It is further urged by contestant, however, that the fact that the tally-keepers were not sworn officers throws suspicion upon the count. All the evidence on this subject is as follows: Dameron says, "I do not think the tally-lists were very *regularly* kept, as we had no regular tally-keepers, and had to take them about as we could get them. I believe the tally-lists were kept as correctly as they could have been kept under the circumstances." It cannot be urged that this statement would throw suspicion upon or impeach the returns, for Dameron swears that they proceeded to make out the returns and tally-lists in accordance with law. The law of Louisiana requires that the election-returns shall be sworn to by the commissioners, and Dameron and the other commissioners took and subscribed to the following oath: "Personally appeared before me, the undersigned authority, duly appointed and qualified, commissioners *of election* of poll No.——, election-precinct of the parish of——, for the

general election held November 2, 1874, who, being duly sworn, depose and say that they received the ballots cast at the said poll of the said precinct, and that the above is a true return of the vote cast at the said poll on the said day." It is not presumed that Mr. Dameron would be willing to swear and subscribe to that which was untrue. And it is a conclusive legal presumption that he was satisfied at the time when the return was made that it contained a correct statement, as he swore. Nor does Mr. Dameron swear that the return is not correct, nor is there any evidence tending to disprove the return. The return, therefore, stands, taking all the evidence in regard to it, as unimpeached. The law is well established, and this House has repeatedly held, that the introduction of persons who were not sworn to assist in holding the election will not, of itself, vitiate the return of the officers, without evidence of fraud. (Eggleston *vs.* Strader, 2 Bart., 897.) The evidence in this case proves that all the officers were regularly appointed and sworn, but that the commissioners requested some by-standers to assist in keeping tally-lists while counting the vote. It cannot be maintained for one moment that, in the absence of any proof of fraud or irregularities, the legal returns should be rejected for this reason. There remains but one other ground that can be urged against the receiving and counting of these returns from this box, viz, the removing of the box from the poll before the vote was counted. Taking the evidence altogether we are of the opinion that it established only an irregularity, and the only question to be determined in regard to this poll is, whether the ballots cast at this poll shall be thrown out on account of the votes not having been counted at the poll before it was removed. The election law of Louisiana, in force at this election, section 43, is as follows:

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress, shall be held on the first Monday in November; and said election shall be styled the general elections. They shall be held in the manner and form and subject to the regulations hereinafter prescribed, and no other.

SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election, the commissioners of the election at each poll or voting-place shall proceed to count the votes, as provided in section thirteen of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all such commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling-places, to consolidate such returns to be certified as correct by the clerk of the district court, and forward the consolidated returns with the originals received by him to the returning-officers provided for in section two of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section twenty-six of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the vote.

Section 13 is as follows:

SEC. 13. *Be it further enacted,, &c.*, That it shall be the duty of the commissioners of election at each poll or voting-place to keep a list of the names of the persons voting at such poll or voting-place, which list shall be numbered from one to the end; and said list of voters, with their names and numbers as aforesaid, shall be signed and sworn to as corrected by the commissioners immediately on closing the polls, and before leaving the place, and before opening the box. If no judge, or justice of the peace, or other person authorized to administer such oath, be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting-place immediately after closing the elec-

tion and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any by-stander or citizen who may be present. Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required; and in the parish of Orleans the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed.

Is the failure of the commissioners to comply with this law sufficient to warrant the committee in throwing out the vote polled at this poll? This is the only question in regard to this box which remains to be answered. Starting out with the proposition that the State law in Federal elections is the rule adopted and governs Federal elections, and that the interpretations of the State laws by the supreme court of the State are taken as binding authority, we are first to notice the statute of the State where the election was held: next to ascertain whether there has been an adjudication by the supreme court of the State construing the provisions of the law providing the forms as to how the election shall be conducted, and whether the terms employed in such law are mandatory or directory. If the State courts have not adjudicated or construed these provisions of the law, then we understand the rule to be that the committee will determine for themselves whether such clauses of the law as regulate the manner of holding the elections are mandatory or directory. If, however, the question has been adjudicated, the committee will look no further than to the adjudication in order to ascertain the construction given to the State laws by the courts of the State. The question therefore arises, Have the election laws of Louisiana been construed by the supreme court of the State? By examining the decision of the supreme court of the State of Louisiana, Burton *et al. vs.* Hicks *et al.*, page 156 record, we find that the supreme court of Louisiana has interpreted and construed the election-laws governing this election. We quote the opinion in that case in full:

It has often been decided that the failure to comply with the *directory* clauses of an election-law will not annul an election. Courts cannot affix to the omission a consequence which the legislature has not affixed. (9 An., 557; 10 An., 732; act of 1873, p. 18.)

There is an essential difference between the act of voting and the police provisions to secure the evidence of the act. If the votes be deposited the object of the election is attained, and its validity cannot be affected by the non-observance of the directory provisions. (13 An., 301.) The act of 1873, No. 98, provides for the punishment of those who violate its provisions, and the criminal courts of the State have cognizance of such matters. The law does not authorize the election to be set aside except for fraud, intimidation, violence, or corruption at or before the election, and then only when such fraud, violence, intimidation, &c., had the effect to change the result of the election.

"Errors of judgment are inevitable, but fraud, intimidation, and violence the law can and should protect against." (Cooley's Limitations, p. 621.) The same author says: "When an election is thus rendered irregular, whether the irregularity shall avoid it or not, must depend generally upon the effect the irregularity may have had *in obstructing the complete expression of the popular will*, or the production of satisfactory evidence thereof. Election statutes are to be tested like other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish, and, except where they specifically provide that a thing shall be done in the manner indicated, and not otherwise, their provisions, designed merely for the information and guidance of the officers, must be regarded as directory only, and the election will not be defeated by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared" (618); and it was said in People *vs.* Cook (14 Barb., 257, and 8 N. Y., 67), "that any irregularity in conducting an election which does not deprive a legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive a benefit from it, should be overlooked in a proceeding to try the right to an office depending on such election. This rule is an eminently proper one, and it furnishes a very satisfactory test as to what is essential and what is not in election-laws. And when a party contests an election on the ground of these or any similar irregularities, *he ought to aver and be able to show that the result was affected by them.*" (Cooley's C. Lim., p. 619; 13 An., 175.)

It will be observed that the supreme court of Louisiana have decided that the provisions in sections 1, 13, and 43, prescribing regulations as to the manner of conducting and holding an election, are directory. Even without the opinion of the supreme court, we are satisfied that the law in contested elections sustains us in asserting that these clauses are directory and not mandatory, and must be interpreted, in view of the evidence, as directory in this particular case, for the reason that the evidence does not tend to show that the actual merits of the election were affected by a non compliance with their provisions.

McCrary, in his Election Law, says:

If the statute expressly declares any particular act to be essential to the validity of the election, or that its omission should render the election void, all the courts whose duty it is to enforce said statutes must so hold, whether the particular act in question goes to the merits or affects the result of the election or not. But if, as in most cases, the statute simply provides that acts or things shall be done within a particular time, or in a particular way, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not, affect the actual results of the election. * * * Those provisions which affect the time and place of holding elections and the legal qualifications of the electors are generally of the substance of the election, while those touching the record and the returns of the votes received are directory. The principle is that irregularities which do not tend to affect the results, are not to defeat the will of the majority. The will of the majority is to be recognized even when irregularly expressed. (McCrary, 126-127.)

The same author says:

It is mainly with reference to these two results that the rules for conducting elections are prescribed by legislative power. To hold that these rules are mandatory is to subordinate the substance to the form, the end to the means. (P. 200.)

Further on the same author says:

Bear in mind that irregularities are generally to be disregarded, unless the statute expressly declares that they shall be fatal to the election, or unless they are such in themselves as to change or render doubtful the result. (P. 200.)

In the case of David Bard (Hall and Clark, 116), the committee held—

That even where the law required that the returns should be made on the 15th day of November, and the commissioners of election did not make the return until the 1st of May, then this irregularity would not defeat the election.

In the case of Biddle and Richard *vs.* Wing (C. & H., 506), the committee said:

When the people, in the exercise of their constitutional rights, have gone through the process of an election according to the prescribed rules of law, they ought not to be deprived of the advantage accruing therefrom but for the most substantial reasons. Indeed, nothing short of the impossibility of ascertaining for whom the majority of votes have been cast ought to vacate the election.

Again, this House, in the case of Draper *vs.* Johnson (C. & H., 703), decided that—

The law requiring votes to be returned within a limited time is directory only, and if they are not returned by that time, the election is not vitiated. They may be received afterward.

Again, in the case of Mallory *vs.* Menall (C. & H., 328), where the presiding officer of the election, whose duty it was, by law, to return the votes sealed up, returned them unsealed, they were, in the absence of any evidence of fraud, allowed to be received. Also, that, "votes fairly given to a party may be counted in his favor though they have never been returned to the proper authorities." To the same effect see Brightly's Election Cases, page 571.

McCrary, sec. 305, says:

If the voice of the electors can be made to appear from the returns with reasonable clearness and certainty, then the election shall stand.

The burden of proof is upon the contestant that non-compliance in the particular above mentioned affected the actual merits of the election. This he has failed to do, and, guided by the principles of law governing election cases, the official returns on page 130, record, Ex. 25, must be presumed to be honest and correct until the contrary is made to appear.

The burden of proof is always upon the contestant or the party attacking the official return or certificate. The presumption is that the officers of the law having charge have discharged their duty faithfully. (McCrary, 306.)

We therefore conclude that the return, which is as follows, should be counted:

EXHIBIT 25.—*Statement of votes at poll No. 5, parish of Concordia.*

Statement of votes cast at poll No. 5, of election-precinct No. 5, of the parish of Concordia, for members of Congress, State and parish officers, at the general election November 2, 1874, in accordance with law.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| * | * | * |
| Frank Morey | Congress, fifth dist | (440) four hundred and forty. |
| F. Morey | Congress, fifth dist | (1) one. |
| W. B. Spencer | Congress, fifth dist | (36) thirty-six. |
| Wm. Spencer | Congress, fifth dist | (1) one. |
| * | * | * |
| A. B. Boner | Congress, fifth | (3) three. |

*Statement of votes*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| (498) four hundred and ninety-eight. | None. | |

STATE LOUISIANA, *Parish of Concordia:*

Personally appeared before me, the undersigned authority, John F. Dameron, R. H. Columbus, and T. E. D. Jefferson, duly appointed and qualified commissioners of election of poll No. 5, election-precinct of the parish of Concordia, for the general election held November 2, 1874, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned, that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

Sworn and subscribed to before me this 4th day of November, A. D. 1874.

JNO. A. WASHINGTON,
*Supervisor of Registration.*
JNO. F. DAMERON,
THOS. E. D. JEFFERSON,
R. H. COLUMBUS,
*Commissioners of Election, Poll No. 5, Parish of* ——.

OFFICE OF SECRETARY OF STATE,
*New Orleans, La., April* 5, 1875.

I certify the foregoing to be a true copy of the original document filed in my office by the board of returning-officers of the State of Louisiana, in so far as it relates to Frank Morey, F. Morey, W. B. Spencer, Wm. Spencer, and A. B. Boner.

[SEAL.] N. DURAND,
*Assistant Secretary of State.*

| | |
|---|---|
| This gives to Morey | 447 |
| Spencer | 31 |
| Which gives Morey a majority of | 404 |
| Which,, added to majority stated | 2,548 |
| Gives Morey a majority of | 2,952 |
| Which, taken from Spencer's conceded majority of | 3,944 |
| Would leave, exclusive of Carroll Parish, Spencer a majority of | 992 |

*Carroll Parish.*

The first question that presents itself for decision in reference to this parish is the objection, found on page 31, to the admission of the record in the case of Burton *vs.* Hicks. We think it will need no argument to satisfy the committee that this evidence should be excluded. We are of the opinion that it should be excluded on the grounds assigned by contestee, that it is "*res inter alios acta*" (p. 331, record).

The next matter to be considered is the objection, found on page 8 of record, made by contestee to the evidence offered by contestant of Charles Cavanac and F. C. Zachary.

The objection is as follows in both cases:

Objected to by Mr. Frank Morey, on the ground that Mr. Cavanac was in no way officially connected with the election in the fifth Congressional district; was not a member of the returning-board to whom the returns of election were returned; is not a resident, and was not in the fifth Congressional district during the time of election on the 2d day of November, 1874; has not had official charge or custody of any election-returns in the fifth Congressional district; and, as I understand, has no evidence to give of his own knowledge as to what transpired at the election in the fifth Congressional district on the 2d day of November, 1874.

The evidence given by both of these parties is entirely hearsay, and certainly is wholly incompetent, they not being officers of the returning-board, having no custody of any of the official papers or returns in connection with the election, and not having been present at any of the polls in Carroll Parish on the day of election, and possessing no knowledge of their own in regard to any fact connected with said election in Carroll Parish. We are of the opinion that the evidence should be excluded, and therefore sustain the objection made by the contestee.

The grounds upon which the contestant claims that the polls in this parish should be rejected are numerous, and he asks that the entire vote in this parish shall not be counted. The contestee denies each and every allegation contained in the contestant's notice, and asks that the vote in this parish shall be counted. The first question which arises is, was there a legal election held in this parish on November 2, 1874? In order to determine this question, it will be but necessary to refer to the statute of Louisiana, No. 98, which provides that the election for members of Congress shall be held on the first Monday of November. That there was an election held in Carroll Parish, of the State of Louisiana, on the first Monday of November, 1874, there can be no question. No evidence has been introduced to prove the contrary; but all the evidence introduced by the contestant and contestee proves that there was an election held on that day. There is no evidence to show but that all the officers of election were duly and regularly appointed, in compliance with the law of the State of Louisiana, for Carroll Parish. All the evidence introduced by contestant and contestee proves that the officers in Carroll Parish were regularly appointed, the commissioners being taken from opposite political parties, and proceeded regularly to hold the election, and that at the election held on that day in Carroll Parish, at the various precincts thereof, the ballots were received and counted by the various commissioners at the respective polls in accordance with law; that at the conclusion of said election the ballots so cast at the respective polls were counted out by the commissioners at the polling-places without removing the boxes. Tally-lists were made and completed by or under the supervision and direction of the commissioners; that the returns of said election, with the tally-sheets, and in compliance with law, were thereupon made, and, as well as the list of voters,

were signed by the commissioners duly authorized to hold the election and sign said returns.

We therefore conclude that there was a legal and valid election held in Carroll Parish on November 2, 1874. The law of Louisiana provides that tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required.

And contestant, in order to establish the fact that this law, which has been clearly shown to be directory, was not complied with, proves by one Galbraith, deputy clerk, that there were not, at the time said evidence was taken, April 27, 1875, on deposit in the office of the clerk, either the ballots or ballot-boxes, returns or other papers, connected with the election held on November 2, 1874, in Carroll Parish. This is not denied by the evidence of contestee, and must be taken as admitted. Galbraith (and he is the only witness upon this point) also swears that no ballot-boxes, ballots, or returns have been deposited in the clerk's office since November 2, 1874 (p. 28, record.) By examining E. M. Spann's evidence (on page 45, record), you will find that he swears positively as follows:

Q. After the returns were made out, what was done with them and the other papers pertaining to the election at that poll, and with the ballot-box containing the ballots cast at that poll?—A. David Jackon, another commissioner, and myself took them to Providence, the parish-site, and deposited them in the office of the clerk of the court, all except the returns, one copy of which was left with the clerk of the court and another given to the supervisor of registration of the parish.

Thus directly contradicting Galbraith in reference to the boxes not having been deposited in the clerk's office.

There is no evidence on the part of the contestant that the law was not fully complied with in the particular of depositing the ballot-boxes in the clerk's office except that of Galbraith, who is contradicted in regard to it. When this evidence was taken, a term of the district court had been held, as is shown by the following testimony of R. K. Anderson:

Q. Has or not a term of the district court been held in this parish since the election in November last?—A. There was a session commencing on the first Monday in December last, I think.

R. K. ANDERSON.

Sworn to and subscribed before me this 3d daay of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

It is not surprising that there were no ballots to be found in the clerk's office cast at this election, since we find, by referring to Exhibit D, which is as follows:

EXHIBIT D.—CARROLL PARISH.—S. DUNCAN GLENN, NOTARY PUBLIC.

ROOMS OF GRAND JURY,
*Thursday, December* 10, *A. D.* 1874.

To the Hon. Wade H. Hough, judge of the 13th district court of Louisiana, holding sessions in and for the parish of Carroll:

Your grand jurors, impaneled for the present term of your honorable court, beg leave to submit the following report:

* * * * * * *

Quite a number of irregularities are reported in the conduct of the recent elections in this parish, but upon investigations we do not find them to be of such a character as require the action of the grand jury.

A. C. RHOTEN,
*Foreman.*

OFFICE OF CLERK OF 13TH JUDICIAL DISTRICT COURT.

STATE OF LOUISIANA,
*Parish of Carroll:*

I hereby certify that the above and foregoing is a true and correct copy of the report of the grand jury so far as it appertains to the election held in this parish on the 2d day of November, A. D. 1874.

Given under my hand and seal of office this 6th day of May, A. D. 1875.

[SEAL.] T. J. GALBRUT,
*Deputy Clerk.*

that an investigation had been had in regard to this election by the grand jury of Carroll Parish during the session of the district court in December, 1874. The evidence in this case was taken after the term of the district court had been held and the investigation had. There is no law compelling the retention of the ballots after the first term of the district court. It will be seen, by the report of this grand jury, that complaints were made in reference to the election held in Carroll Parish, but that, after a full investigation, the grand jury report that, upon investigation, "We do not find them to be of such a character as to require the action of the grand jury." (Exhibit D, page 164, Record.) In connection with the action of the grand jury above referred to, it is proper that we should consider what offenses, connected with the elections, they had cognizance of. The law is as follows:

SEC. 45. *Be it further enacted, &c.*, That any civil officer or other person who shall assume or pretend to act in any capacity as a commissioner or other officer of election to receive or count votes, to receive returns or ballot-boxes, or to do any other act toward the holding or conducting of elections, or the making returns thereof, in violation of or contrary to the provisions of this act, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not to exceed three years nor less than one year, and by a fine not exceeding three hundred dollars nor less than one hundred dollars.

SEC. 57. *Be it further enacted, &c.*, That any person, not authorized by this law to receive or count the ballots at any election, who shall, during or after any election, and before the votes have been counted, disturb, displace, conceal, destroy, handle, or touch any ballot after the same has been received from the voter by a commissioner of election, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment for not less than six months, or both, at the discretion of the court.

SEC. 58. *Be it further enacted, &c.*, That any person not authorized by this law to take charge of the ballot-boxes at the close of the election, who shall take, receive, conceal, displace, or in any manner handle or disturb any ballot-box at any time between the hour of the closing of the polls and the transmission of the ballot-box to the clerk of the district court, or during such transmission, or at any time prior to the counting of the votes, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary for not less than one year, or both, at the discretion of the court.

SEC. 10. *Be it further enacted, &c.*, That in all cases the vote of the person offering to vote shall be taken from the hand of the voter by one of the commissioners of election; and any commissioner of election receiving a vote from the hands of any person other than the voter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars; and any person taking a vote from a voter for the purpose of handing the same to the commissioner of election shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars: *Provided*, That any voter shall have the right to deposit his own vote in the ballot-box with his own hand.

And this report is signed by Mr. Rhoten, the foreman of the grand jury.

That the character of this grand jury for intelligence and integrity was beyond question is not disputed by contestant, and is proven by contestant's witness, Thomas F. Montgomery, a Democrat, who swears as follows (p. 70, Record):

Cross-examination by contestee:

Q. Are you acquainted with the members of the grand jury which served at the last term of the district court in the *parish*, in December last? And, if so, state how many

were white, how many were colored, how many were Democrats, and how many were Republican, so far as you know.—A. I was not a member of the grand jury myself, but I was in the court-house when the grand jury was drawn. I was acquainted with the foreman, Mr. Rhoten, Mr. Shelby, Mr. William Page, Paul Le Fevre. These were all white men, and the three first, I believe, were Democrats. The fourth, I don't know his politics. All the balance of the sixteen grand jurors were colored men, and, I suppose, Republicans. I don't recollect their names.

Q. Is or not Mr. Rhoten, who is the foreman of said grand jury, a large planter and a leading and respected citizen of the parish?—A. He is a good citizen and a large planter.

Mr. Rhoten, the foreman of the grand jury, was a Democrat, a leading and respected citizen of the parish, and a large planter in the same. It cannot, therefore, be contended that this report was made by either ignorant persons or partisans of contestee.

As further evidence that Galbraith was either wholly ignorant regarding this matter, or that his testimony is wholly unreliable, it will be but necessary to refer to the election-law prescribing the duties of the supervisors of registration, which is as follows:

SEC. 43. *Be it further enacted,* * * * It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling-places' to consolidate such returns to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning-officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail.

By an examination of Mr. Lackey's evidence (contestant's witness), it will be observed that he testifies as follows:

Q. Were the returns which you signed correctly made up from the returns of commissioners of election?—A. Yes.

Q. Did you discharge the duties of your office honestly and fairly according to the best of your ability?—A. I did.

Showing conclusively that the commissioners from the various polls must have filed with supervisors and the clerk of the court their returns, for it will be observed that Mr. Lackey swears that he discharged his duties "honestly and fairly," showing inferentially that the clerk of the district court must have certified to the return made up by him, as he says, "correctly from the returns of the commissioners of election for Carroll Parish." The law above quoted distinctly defines the duty of the clerk to be to certify to the correctness of the returns, which are to be consolidated by the supervisors of registration. The legal presumption is that the clerk did his duty. Lackey could not have discharged his duty properly in this connection unless the clerk certified to the correctness of the returns, and the clerk could not have certified to the returns unless he had said returns on deposit in his office. In the same section of the law is found the following:

He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes.

Section 26, referred to, is as follows:

SEC. 26. *Be it further enacted, &c.,* That in any parish, precinct, ward, city, or town, in which, during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting-place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, occur on the day of election, or of the supervision of registration of the parish, if they occur during the time of *registration* or revision of registration, to make in duplicate and under oath a clear and full

statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riots, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or a supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish, if in the city of New Orleans to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning-officers provided for in section 2 of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

There is no evidence produced by contestant that any statement of fraud or irregularity of any kind was made by any commissioner of election in his returns to the supervisor of registration, or that said supervisor of registration made any such return of fraud or irregularity to the said returning-board. It will be observed that the last clause of said section 26 reads as follows: "His copy of said statement shall be so annexed to his returns of election by paste, wax, or some adhesive substance that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney."

The legal presumption is that the officer did his duty in this regard. He also swears that he did his duty "honestly and fairly." This, taken in connection with the fact that the grand jury found no irregularity worthy of notice, conclusively rebuts the contestant's charge that the election in Carroll Parish was characterized by "gross frauds, irregularities, intimidation, and violence."

We now proceed to the discussion of the manner of holding the election at

*Poll No.* 1, *Carroll Parish.*

The majority of witnesses testify that the election at this poll was conducted fairly and honestly; that the count was correctly made; that the law was complied with in every essential particular by the commissioners. Bartholemy (page 36, Record) says he saw the commissioners sign returns; that he kept a memorandum of the votes counted, and they agreed with the returns signed by Spann, the Democratic commissioner, and Rhodes and Jackson, the other two commissioners, and that the vote at this poll was as follows: Morey, 569; Spencer, 33.

This evidence is confirmed by Anderson (page 37), who produces one of the original returns, which is identified by Bartholemy. Said return is found on page 140, record. David Jackson, commissioner of election at poll No 1 (page 38, record), swears to the return on page 140 of the record, and swears that it was signed by him and the other commissioners in his presence. He also swears that Morey received 569 and Spencer 33 votes. T. B. Rhodes, commissioner at poll No. 1, swears that he was there all day; that everything was fair, the vote honestly counted, and returns accurately made out; that Spencer received 33 and Morey received 569 votes. E. M. Spann, the Democratic commissioner, swears that he assisted in calling off the votes; that the tallies did not at first agree; that the votes were counted over again, and the tallies then kept did agree; that he signed the returns in presence of the others, and identifies return on page 140 as one of the original returns made by the three commissioners, sworn and signed by himself, and that they were duly deposited with the clerk, the lawful custodian. The return on page 140 is as follows:

APPENDIX TO TESTIMONY TAKEN IN CARROLL PARISH—EXHIBIT A—CARROLL PARISH.—S. DUNCAN GLENN, NOTARY PUBLIC.

*Statement of votes, poll No. 1, election-precinct of the parish of Carroll.*

Statement of votes cast at poll No. 1, election precinct of the parish of Carroll, for senators and representatives, State and parish officers, at the general election held November 4, 1872, under the provisions of "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved March 16, 1870.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 580 |
| J. C. Moncure | " | 21 |
| Frank Morey | Member of Congress, 5th district | 569 |
| W. B. Spencer | " " " " " | 33 |
| * * * * * * | * * * * * * * | * |

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballot. |
|---|---|---|
| Six hundred and four (604) | One | Registration papers not properly filled out.—Henry Washington. |

STATE OF LOUISIANA,
*Parish of Carroll, ss:*

Personally appeared before me, the undersigned authority, David Jackson, E. M. Spann, and T. B. Rhodes, duly appointed and qualified commissioners of election of poll No. 1, election-precinct of the parish of Carroll, for the general election held November 4, 1872, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have witnessed the counting of the ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

DAVID JACKSON,
E. M. SPANN,
T. B. RHODES,
*Commissioner of Election Poll No. 1, Election Precinct of the Parish of Carroll.*

Sworn to and subscribed before me this fourth (4th) day of November, 1874

T. J. GALBRAITH,
*Deputy Clerk 13th Dist. Court.*

OFFICE OF CLERK OF COURT PARISH OF CARROLL,
*Providence, La., May 4, 1875.*

And this return is certified to by this identical Galbraith as being a correct transcript of so much of the original on file in my office as relates to the votes cast for State treasurer and for member of Congress.

Given under my official signature and seal of office this 4th day of May, A, D. 1875.

T. J. GALBRAITH,
*Deputy Clerk.*

The return being certified to by Galbraith as a correct transcript from the records of his office, and being identified by the commissioners, Spann, Rhodes, and Jackson, as one of the returns made out by them and sworn to, it becomes necessary for contestant to impeach said return. This he does not do. There is not a scintilla of evidence tending to disprove the return introduced by the contestee, nor is there any evidence contradicting Spann, Jackson, Moss, or Rhodes; and even Galbraith, contestant's principal witness (pages 28, 29, record), is forced to admit the following in regard to this poll, being present when the vote was counted:

Q. Did the tally-list that you saw made out give a correct statement of the votes as they were counted from the ballot-box?—A. If the man calling the names from the tickets called the names correctly, the tally-lists I assisted in making were correct.

Q. Was there any fraud or unfairness in counting the votes or making out the tally-lists, that you saw or were aware of?—A. There was not.

Q. Who called off the votes when the tally-lists were made out that you assisted in making?—A. I think E. M. Spann called off for a couple of hours, and then T. B. Rhodes. They were commissioners of election.

Q. Were there, or not, a number of spectators present during the counting?—A. There was.

We therefore have the actual return made, which is the best evidence of the vote cast at this poll. But the return is supported by three witnesses. Contestant has wholly failed to show any legal reason why this return should be rejected.

It may be argued that because the return was found in the possession of an unauthorized person, therefore it should be rejected. This certainly cannot be urged or supported upon any legal principle governing contested elections. The officers discharged their duties, made their returns, and deposited them in compliance with law. It certainly would not be contended, if a thief had invaded the office of the clerk and abstracted the returns, and they were found afterward in the possession of some person unauthorized, that it would be as much a return as before it was stolen, provided the officers who made the return should swear to its identity. But, further, on pages 111 and 112 of record, E. M. Spann, the Democratic commissioner, on November 23, 1874, makes an affidavit, in which he gives the actual vote cast, and in that affidavit he states that Morey received 569 and Spencer 33 votes, corroborating in every particular the return, as well as the parole evidence of Jackson and Rhodes. But the evidence before us does not leave us in any doubt as to where this return came from. R. K. Anderson (p. 49, record) swears that he received this return from the clerk of the court, and Galbraith, as before stated, certifies to that fact. The return, the moment that it is fully identified as one of the originals made by the board, becomes the highest evidence that can be adduced as to the result, and must be received as such until impeached by evidence. We therefore accept the return as giving the correct result at poll No. 1, Carroll Parish, of the votes cast for members of Congress. The return is as follows:

APPENDIX TO TESTIMONY TAKEN IN CARROLL PARISH.—EXHIBIT A.—CARROLL PARISH.—DUNCAN GLENN, NOTARY PUBLIC.

*Statement of votes, poll No. 1, election-precinct of the parish of Carroll.*

Statement of votes cast at poll No. 1, election-precinct of the parish of Carroll, for senators and representatives, State and parish officers, at the general election held November 4th, 1872, under the provisions of "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved March 16th, 1870.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 580 |
| J. C. Moncure | " | 21 |
| Frank Morey | Member of Congress, 5th dist | 569 |
| W. B. Spencer | " " " " " | 33 |
| * * * * * * | * * * * | * |

*Statement of votes*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| Six hundred and four (604) | One | Registration papers not properly filled out.—Henry Washington. |

STATE OF LOUISIANA,
*Parish of Carroll, ss:*

Personally appeared before me, the undersigned authority, David Jackson, E. M. Spann, and T. B. Rhodes, duly appointed and qualified commissioners of election of poll No. one, election precinct of the parish of Carroll, for the general election held November 4th, 1872, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have witnessed the counting of the ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

DAVID JACKSON,
E. M. SPANN,
T. B. RHODES,
*Commissioners of Election, Poll No. 1, Election Precinct of the Parish of Carroll.*

Sworn to and subscribed before me this fourth (4th) day of November, 1874.

T. J. GALBRAITH,
*Deputy Clerk 13th Dist. Court.*

OFFICE OF CLERK OF COURT, PARISH OF CARROLL,
*Providence, La., May 4, 1875.*

I certify that the foregoing is a correct transcript of so much of the original on file in my office as relates to the votes cast for State treasurer and for member of Congress.

Given under my official signature and seal of office this 4th day of May. A. D. 1875.

T. J. GALBRAITH,
*Deputy Clerk.*

In addition to the positive testimony of the commissioners of election and the returns as to the vote actually polled at the poll No. 1, we find the following cumulative evidence, which clearly shows that nearly all the votes cast at poll 1 were cast for Morey; that he was supported by both wings of the Republican party, there being no Democratic ticket voted, and there being but a few Democrats living in the ward and voting at this poll. We give all the testimony not heretofore quoted on this point. J. E. Burton, for contestant, p. 32, record, testifies:

Cross-examined by contestee:

Q. Please state whether or not there were two factions of the Republican party in Carroll Parish?—A. There were.

Q. Did or did not both factions generally support and vote for the constitutional amendments, for Dubuclet for treasurer, and for Frank Morey for Congress from this district?

(Objected to by contestant.)

A. They did.

Q. Were you acquainted with the sentiment politically throughout the parish, and were you or not one of the leaders of the wings of the Republican party in this parish?—A. I was well acquainted, and was one of the leaders, as stated.

Q. Did you, either before or since the election, hear or know of any Republicans who supported or voted for William B. Spencer for member of Congress at the election in November last?

(Objected to by contestant.)

A. I know of but two; have heard of no others.

N. Burton, for contestant, p. 58, testifies:

Q. Whose name for member of Congress was on the regular tickets of both wings of the Republican party at that poll?—A. The name of Frank Morey was printed on the regular ticket of both wings. But on a good many of these tickets William B. Spencer's name in print on a slip was pasted over the name of Frank Morey.

Q. Do you know of your own knowledge that any of these tickets with Spencer's name pasted on them was voted at poll No. 1? And, if so, state how many and by whom they were cast.

(Question objected to by contestant.)

A. I know that some of them were voted; I do not know the number, but can state some of the names who voted them, to wit, J. G. Lynch, who says he was never a Democrat, but was an old-line Whig before the war, and who now calls himself a Conservative: three of the Bernds, who are Conservatives; the two Meyers, Jacob Stein, all of whom are classed as Conservatives. These were all I can name, but I know of some others whose names I do not recollect. The Conservatives voted the "pasted ticket."

Q. How many of the leaders of the Gla wing were there who had this feeling that you speak of against Mr. Morey?—A. There were five of them that I know of, to wit: J. A. Gla, Ed. Burton, Nicholas Burton, David King, Ed. Jackson, and Henry Atkins.

Q. Do you know that any of these did not support Mr. Morey for Congress, and did not the Gla wing generally support him?—A. I know three of them who did support and vote for him notwithstanding this feeling, and two of the others told me they did the same, and the Gla wing generally supported Mr. Morey.

Judge C. E. Morse, for contestee, p. 35, testifies:

Q. Do you know about what number of votes were cast at said poll on said day?

(Contestant objects to this question on the ground that the election returns are the only proper evidence of the votes cast.)

A. At 5 o'clock, when I left, there were five hundred and fifty-two votes cast.

Q. Can you tell about how many votes had been cast at poll No. 1 for Morey and Spencer, candidates for Congress, up to the time when you left?

(Contestant objects, on same grounds as last above stated, to this question.)

A. Nearly all the votes were for Morey. Mr. Morey was supported by both factions of the Republican party at that box, and there were but four Democrats in that part of the parish and voting at that box. I did not know of or hear of any Republicans voting for Spencer or against Morey at that box. Morey's name was on tickets of both wings of the Republican party.

We now pass to consider the objection made by contestee to the introduction of certain evidence as to the charge of irregularities and fraud at this poll. Upon an examination of the evidence it will be found that the contestant failed to introduce any evidence as to irregularities, fraud, or misconduct at this poll, during the time allowed him by law (or by agreement thereunder by the parties to this contest), as evidence-in-chief. But all the evidence affecting this poll, as to irregularities, fraud, or misconduct, was introduced by contestant in rebuttal. The objection is found on page 56, record, as follows:

Q. Did you or not see persons hand up at different times more than one ballot?

(Objected to by contestee on the ground, first, that contestant made no attempt or failed to produce any evidence-in-chief on this point; and second, that this question or the answer thereto is not and cannot be in rebuttal of any evidence produced for contestee.)

Q. Did you see any one of the commissioners change ballots handed to him to be put in the box and put in a different ticket, and who was that commissioner?

(Contestee makes the same objection to this question as above.)

Q. Did you or not then and there remonstrate with him against such conduct?

(Same objection by contestee.)

Q. Could or not the commissioners of election, where they sat while receiving votes through the window, identify and see who the person was who handed in his ticket?

(Same objection by contestee as above.)

Although, singularly enough, contestant withheld all evidence of certain irregularities, fraud, and misconduct, claimed in his notice, as to this poll, until contestee had consumed his time, and thereby prevented contestee from introducing evidence to impeach or explain the evidence of this witness, and thereby not affording contestee the opportunity to which he was by fairness entitled of attacking the character and evidence of the witness, the manner of introducing this evidence subjects it to very grave suspicion. We are inclined to the opinion that the evidence is rebuttal, and therefore overrule the objection, but are of the opinion that the evidence is not entitled to as much weight as it would have had, had the contestant followed the usual rule and introduced the evidence of this witness in chief.

We now come to consider the evidence introduced to sustain the charge of irregularities at this poll. The evidence of both contestant and contestee agrees that the election was held in a log building; that when the voting commenced the box was placed at the door, and that strips were nailed across the door to keep the crowd from entering the room; that the crowd was so great that it broke the slats which were so nailed, and it was then suggested that the ballot-box should be removed to a window; that the window had bars running up and down three inches

apart. All the evidence regarding the removal of the box from the door to the window is given by T. B. Rhodes, and is as follows:

Q. Please state how the ballot-box at that poll happened to be placed at a window.—A. We commenced voting at the door of the building in the morning, and nailed strips across the door to keep the crowd out. The crowd became so noisy and so eager to vote that in pressing against the strips they broke them off. Some one then proposed that the box be removed to the window. It was then placed on a table by the window, so that the top of the box was above the window-sill.

Q. Was there any objection on the part of the Democratic commissioner or any party present to placing the box at the window?—A. There was no objection, but it was suggested by some one that each voter had a right to place his ballot in the box with his own hand. So we caused it to be proclaimed that any one who wished to place his ballot in the ballot-box himself could come in the room and do so; and accordingly many did do so.

Q. Could the ballot box at the window be seen by the voters outside?—A. It could be seen by the voters all the time from the outside.

The height of this window from the ground, as testified to by various witnesses, is as follows:

Nicholas Burton, contestant's witness, p. 57, record, swears:

Q. You said the window was about 6 feet from the ground. Are you positive that it was more than 5 feet 10 inches?—A. I measured it and made it a little over 6 feet; about one inch and a half over it.

D. S. Vincent, contestant's witness, p. 65:

The voting, while I was at the poll, was done by handing the tickets or the ballots through the window. From my observation, without having measured it, the window was between 6 and 7 feet from the ground, where the voters stood. The window had slats across it, up and down, about 3 inches apart.

A. Cunningham, contestant's witness, p. 63:

The votes were received by the commissioners at a window, about 6 or 7 feet from the ground.

Noah Lane, contestant's witness, p. 65:

Q. Did you vote and see others at said poll; and, if so, where and how did they vote?—A. I voted there and saw others vote. The door of the house was closed against us, and we voted at a window which was so high that I had to lift another man up to vote.

Cæsar Johnson, contestant's witness, p. 67:

Q. State where and how the voters voted at said poll while you were there, and how it was managed.—A. I voted at the window, and all others who voted with me at the same time did the same. I voted by the assistance of Noah Lane, who caught me under my arm, and assisted me up so I could reach the window.

This same witness, on cross-examination, testifies:

Q. Are you a short man?—A. I am about 5 feet 2¼ inches.

Q. When Lane helped you to put up your ballot, did he lift you off the ground, or did he stretch you up by assisting you by one arm?—A. He assisted me by lifting one arm, I at the same time helping myself up against the side of the house.

While T. B. Rhodes, witness of contestee, p. 43, testifies:

Q. How high was the window from the ground?—A. I measured it, and my recollection is that it was between 5 feet 8 inches and 5 feet 10 inches from the ground.

This is all the evidence adduced in regard to height of the window. It was urged by contestant in his argument and brief that this window was so high that it was impossible for the voters to hand in their votes. Taking the evidence altogether, it shows that the window was not so high but that all persons desirous of handing in their votes could have done so, and did so hand them in. Certainly the fact of the ballot-box being placed at the window, rather than at the door, after the guards had been broken down, goes to show that it was placed there in the interest of fairness and good order, and in order that the commissioners would not be interrupted while the voting was going on.

This evidence does not tend to prove that any voter was deprived of his right to vote by the box being taken from the door, and placed at the window, or that the actual result of the election at this poll was affected by such change. The evidence both of contestant and contestee establishes the fact beyond contradiction that during the whole election the candidates upon the different political tickets, as well as the sworn United States supervisors of both political parties, were admitted to the room where the ballot-boxes were kept, and were where they could observe and scrutinize the acts of the commissioners. T. B. Rhodes, one of the commissioners at the said poll, testifies that no objection was made by the Democratic commissioner or any party present to the placing of the box at the window. If the facts were such as to have caused any suspicion that the moving of the box from the door to the window would have worked injustice, the Democratic commissioner or some of the candidates would have objected. We are satisfied that the objection made against the box for this reason is an afterthought of a defeated candidate and is technical. Some one suggested that each voter had a right to place his ballot in the box with his own hand, and thereupon the commissioners caused it to be proclaimed that any one who wished to place his ballot in the ballot-box himself could come into the room and do so, and accordingly many did so. This witness also says that the ballot-box at the window could be seen by voters outside all the time the voting was going on. There is no contradiction of Rhodes in the particular that this proclamation was made except by Burton, who says many did come into the room and vote, thereby confirming Rhodes's testimony that this announcement was made, but one party came in to vote, and it was objected to, but they allowed him to vote. He does not swear that any other person attempted or requested to enter the room to deposit his own vote, nor is there any testimony to prove this fact. Burton says, however, that he did not hear any such proclamation. Certainly this is no evidence to contradict the positive statement of Rhodes that said proclamation was made. It is merely negative evidence. The next objection to the votes being counted at this poll urged by contestant in his notice and argument is that votes were handed up on sticks. We cite all the evidence bearing on this branch of the subject. The evidence produced by contestant on this subject in regard to this method of voting is as follows:

Nicholas Burton, page 56, record, testifies:

Q. State what you know as to the manner in which said election was held at that poll how the voting was done, and where.—A. In the morning of the election-day the ballot box was at the door of the house. It was kept there about two or three hours; then they took it and carried it to a window, about 6 feet above the ground, and closed the doors of the house. The window had wooden bars across it, up and down. After the box was moved to the window, about three-fourths of the votes polled were handed up on sticks from the ground. The others voted by reaching up with their hands. Those voting at the window could not, a man of them, see what was done with their tickets. At first the box was placed about 2 feet from the window-sill on a table, but the voters on the outside ran their sticks so far as to annoy the commissioners, and they then moved the box about 4 feet from the window. This moving of the box back rendered it still more difficult for the voter to see what became of the ballot.

Upon cross-examination, p. 57, he testifies:

Cross-examined by contestee:

Q. You stated that those who did not vote on sticks reached up their own ballots. Could not all of the voters have done the same, had they chosen to do so, and waited for their opportunity?—A. I think they could if they had waited and taken their turn, provided they were men of ordinary height.

D. S. Vincent, contestant's witness, testifies, p. 63:

Q. Did you vote on that occasion, and why not?—A. I did not vote, though I could have

done so; there was nothing preventing me, except I did not want to wait. There was no trouble that I saw about the poll; everything was peaceable and quiet.

Q. How long were you present at the poll?—A. Between half an hour and one hour.

Upon cross-examination, p. 63, he says:

Q. How many voters did you see voting on sticks?—A. While I was there I did not see more than two or three. If I had been going to vote, I think I would have voted that way myself, as I could have done so more quickly than to have waited to have got closer to the window.

Noah Lane, another of contestant's witnesses, p. 65, testifies:

Q. What time of day was it when you went to the polls?—A. I went to the polls about 12 o'clock and staid until night.

Q. Were you near where the voting was going on while you were there?—A. Yes; I was out in front of the window most of the time.

Q. Did you see any voting on sticks?—A. I did not see or notice any.

Q. How far were you standing from the window?—A. Probably 10 or 20 yards, as near as I can come at it.

Q. Then all the voters that you noticed voted with their hands, did they?—A. Yes, sir.

Q. Who took their tickets?—A. David Jackson took their tickets in.

Q. How many people do you think voted while you were there?—A. I can't tell; there were a good many of them; they kept voting until night.

The witnesses called by contestee, in regard to this matter, testify as follows: Chas. E. Moss, pp. 43, 44, record, says:

Judge CHARLES E. MOSS recalled for contestee, Frank Morey:

Question. State what you know of the matter of voting on sticks at poll No. 1.—Answer. This voting was done at a negro cabin. There was a large crowd around the window, and some voters who could not approach the window, in order that they might vote earlier, placed their ballots on sticks and passed them up to the commissioner. There were perhaps sixty or seventy votes cast in this way.

David Jackson, p. 39, testifies:

Q. Did the voters generally hand you their ballots?—A. They did.

Q. Was or not there a large crowd about the voting-place at certain portions of the day, who were anxious to vote without much delay?—A. There was.

Q. Did or not a portion of this crowd try to vote ahead of others, out of their "turn," as it is called? And, if so, state how it was done.—A. A good many would crowd up to the window, where the box was, and try to vote one before the other. Some of them had short sticks, with the ends split, to which they stuck their ballots and handed up to the commissioners, ahead of others who were nearer to the ballot-box.

T. B. Rhodes, one of the election commissioners, p. 43, testifies:

Q. Was any one compelled at that poll to pass his ballot up to the commissioner on a stick?—A. No one was.

Q. Could not every elector have voted with his hand from the ground?—A. All could have done so.

Q. Was any one permitted to vote at that poll who did not present the proper registration-papers?—A. Not that I know of.

Q. Was there any Democrat present during the election at that poll?—A. There was; Mr. Spann, a commissioner, was present.

Q. Did he take exception to anything that was done in the conduct of the election?—A. He did not.

This concludes all the evidence that has been introduced on this subject. This does not establish the fact that any of the mandatory provisions of the law were violated.

Taking all the evidence introduced by contestant, and even excluding all the evidence offered by contestee upon this subject, it disproves the assertion made by contestant in his argument, that "only the tall ones, by getting close up, could reach their tickets up into the window;" but establishes the fact, beyond controversy, that all of the electors who desired could, and nearly all did, vote by handing their votes to the commissioners, out of their own hands, and that the voting by placing their votes upon sticks did not arise from any necessity owing to the position of the ballot-box, but because some few voters were unwilling

to wait their turn in line. Nor is there any evidence tending to show that the placing the bars upon the window had a tendency in any manner to obstruct the voting, or that the contestant was injured by any of the irregularities, or that any of the irregularities affected the result or prevented the free and full expression of the electors at this poll; but, on the contrary, taking all the evidence together, it proves positively and distinctly that not a single voter was prevented from voting. And the voting on sticks certainly, as shown from the evidence, did not tend to render the poll fraudulent or uncertain. In regard to this matter we cannot express ourselves better than by adopting the language of the supreme court of Louisiana in reference to this identical election, as to these identical irregularities at this poll, which is as follows: "That it is evident from the foregoing evidence that the irregularities shown did not in any manner affect the result of the election. The voting on sticks, and at a high window where the voter had to reach up to hand his ballot to the commissioner, was, certainly, novel; but the excuse for this is given in the evidence cited, and the evidence leaves no doubt that the ballots were fairly deposited in the ballot-box; that no fraud was perpetrated at the election. The fact that the ballot-box could not be seen by those voters who stood near the window cannot be a cause to annul the election." In the case of Augustin *vs.* Eggleston, 12 Annals, 356, the court held that the mere position of the ballot-box, without any resultant injury, does not void an election, and, as it has been often decided in this State, that the failure to comply with the directory clauses of the election-law will not annul the election. The courts cannot affix to the omission a consequence which the legislature has not affixed: 9th Ann's, 537; 10th Ann's, 432, act of 1873, p. 18. Again, quoting the decision in Burton *vs.* Hicks, the court held as follows: "There is an essential difference between the act of voting and the police provisions to secure the evidence of the act. If the votes be deposited, the object of the election is attained, and its validity cannot be affected by non-compliance with the directory provisions. The act of 1873, No. 98, provides for the punishment of those who violate its provisions, and authorizes the election to be set aside only for fraud, violence, intimidation, or corruption at or before the election, and that only when such fraud, violence, intimidation, &c., had the effect to change the result of the election." In this case the contestant has introduced no evidence tending to show that the result of the election was affected or changed by any of the omissions to comply with the directory provisions of the election-laws at this poll. But, on the contrary, the weight of evidence proves conclusively that the election at this poll was fair and free, and that there was an honest expression of the will of the voters. Democrats and Republicans alike testify to this fact. There is but one witness, Burton, who attempts to charge fraud. His evidence is as follows:

Q. Did you or not see persons hand up at different times more than one ballot?

(Objected to by contestee on the ground, first, that contestant made no attempt or failed to produce any evidence-in-chief on this point; and, second, that this question or the answer thereto is not and cannot be in rebuttal of any evidence produced for contestee.)

A. I saw one person hand up four or five ballots.

Q. Did you see any one of the commissioners change ballots handed to him to be put in the box, and put in a different ticket, and who was that commissioner?

(Contestee makes same objection to this question as above )

A. I did see a commissioner at said poll so do, and that commissioner was David Jackson.

Q. Did you or not then and there remonstrate with him against such conduct?

(Same objection by contestee.)

A. I did, and said to him that "that was not fair to drop my tickets and put in his." He tried to bluff me out of it, but I showed him the ticket he had dropped lying on the floor.

Q. Could or not the commissioners of election, where they sat while receiving votes through the window, identify and see who the person was who handed in his ticket?

(Same objection by contestee as above.)

A. The commissioners could not have done so without getting up and going to the window, which they did not do over one-tenth of the time.

Q. You said that the door was closed after the removal of the box to the window, and the voters were excluded from the room; do you mean to say that the commissioners allowed nobody to come into or remain in the room after that time?—A. They allowed myself, who was sheriff, and other officers, such as constables, United States supervisors, and other officers, to remain in the room, but excluded those who were voting, so that all might vote at the window; but I got three of my friends in through the favor of the officer at the door, all of whom voted while inside. While the last one of these three was voting, David Jackson objected to it, and I said, "Let this one vote, and I will bring no more inside."

Q. Were you not inside of the room a greater part of the day?—A. I was.

Q. Were you watching the election pretty closely?—A. I was trying to, but they rather got away with me.

Q. How many ballots do you know were exchanged by David Jackson for others?—A. I could swear to only one, which I saw him change, but there was another lying on the floor in the same position, but I do not know that this one was changed.

Q. What difference was there in the two ballots that were so exchanged?—A. Mine was a white ticket and his was what we called a "calico back;" they had the names of different candidates on them for State senator, members of the house of representatives of the State, sheriff, parish judge, and other minor officers; they both had the same name for State treasurer and member of Congress on them. Both tickets had the name of Frank Morey for member of Congress on them.

Q. Who handed up the four or five ballots which you spoke of as having been handed by one person?—A. Cain Sartain, a candidate for the house of representatives on the Benham ticket.

Q. Did he not hand them up for voters who desired him to do so?—A. He said so after I stopped him. He said he could show the men whose tickets he handed up, and started off to find them, but did not come back. I do not know that he did not hand up these tickets at the request of voters, but I did not believe he did.

Q. Did anybody complain that Cain Sartain handed up tickets for them without their consent?—A. I heard no such complaint.

Q. Was not the registration-papers of the voter always handed up with the ballot?—A. I believe they were.

Q. Do you know of any other person, except Cain Sartain, who handed up the ballot, either by hand or on a stick, whom you knew was not the party named in the registration-paper which accompanied the ballot?—A. Not to my own knowledge.

He was introduced in rebuttal, and gives details not before brought out and nowhere to be found in the record except as alleged in contestant's notice of contest. Contestee had no opportunity to disprove the statements Burton makes. He (Burton) was the candidate for sheriff and was defeated; and he had contested this same election and had been defeated after the same had been carried to the supreme court of the State. His evidence shows him to be a strong partisan. Taylor, in his excellent work on evidence, in regard to partisan witnesses, says: "They being zealous partisans, their belief becomes synonymous with faith as defined by the apostle, and it too often is but the substance of things hoped for, the evidence of things not seen"; and, to adopt the language of Lord Campbell, "Partisan witnesses come with such bias in their minds to support the cause in which they are embarked that hardly any weight should be given to their evidence." Burton is directly and positively contradicted by Judge C. E. Morse, pp. 35, 43, 44, record; also by Galbraith, pp. 28, 29. Spann, the Democratic commissioner, says that he does not recollect hearing Nicholas Burton make any complaints of unfairness to the commissioners or other persons while the voting was going on.

Is it not strange that, with a Democratic supervisor in the room observing all that was done at that poll, and with a Democratic commissioner, Mr. Spann, assisting in receiving the votes, with candidates on different political tickets in the room, that this man Burton is the only person in that room who observed any misconduct on the part of Jack-

son, and that no one but Burton should have known of or heard the altercation which Burton says took place between him and Commissioner Jackson? If this evidence were true, certainly such a conversation as Burton speaks of could not have taken place without having been overheard by the other commissioners, or by some one who was in the room. Very little weight will be given to the evidence of Burton when it is understood that the following is the evidence of Rhodes and Spann, which shows that the charges made by Burton were an after-thought, not occurring to him until some days after the election had been holden. Rhodes' evidence is as follows (p. 46, record):

T. B. RHODES recalled for contestant.

Question. Have you had any conversation since the election on 2d November, 1874, with Nicholas Burton regarding the fairness of the election held on that day at poll No. 1? If so, please state it.—Answer. The first conversation I had with him was the day after the election—the day we signed the returns. Burton was claiming to be United States commissioner at the poll. He said he thought we, the commissioners, acted fair in the matter. I wrote or dictated a certificate on the tally-roll that Mr. Mayer, the other United States commissioner, kept. The certificate stated, in substance, that the election was perfectly fair, and that the tally-sheet exhibited the true result of the election at that poll. Mr. Mayer and Mr. Burton both signed the certificate. I had a conversation with Nicholas Burton again about a week after the election. He had just received the news of the election of Gla as State senator. Gla was a candidate on the same ticket as Burton. They were both colored men and nominees of the same wing of the Republican party. He said that he was satisfied that his wing of the party was overwhelmingly defeated in the parish, but was satisfied, as Gla was elected senator from this district. He further said that the commissioners at poll No. 1 should have given him thirteen more ballots than they did, for the last count gave him that many less than the first count did. He expressed his dissatisfaction in no other respect.

Also, E. M. Spann (pp. 45, 46) testifies:

Question. Do you know Nicholas Burton?—Answer. I do.

Q. State whether or not he was present in the room with the commissioners frequently during the day of election, watching how it was conducted, and whether or not he made any complaint of unfairness to the commissioners or other persons, so far as you know or heard.—A. He was present the greater part of the day in the commissioners' room, and seemed to be watching the voting very closely. I do not recollect of hearing him make any complaints while the voting was going on. He complained of being defrauded of a few votes between the first and second counts.

I now pass to the consideration of the evidence wherein it is stated that greenbacks were handed out from the window at poll No. 1 by Commissioner Jackson when he handed back the registration papers to the voters. There are but two witnesses, viz, Cæsar Johnson and Noah Lane, who testify in regard to this matter. I give all their testimony upon the subject, which is as follows (pp. 65–67, record):

*Testimony of Noah Lane.*

NOAH LANE, sworn for contestant, testifies as follows:

Question. State your name, residence, and occupation, and where you were on 2d of November last, the day of the general election.—Answer. My name is Noah Lane; Transylvania plantation, Carroll Parish; and was at poll No. 1 on the election day.

Q. Did you vote and see others voting at said poll; and, if so, where and how did they vote?—A. I voted there, and saw others vote. The door to the house was closed against us, and we voted at a window which was so high that I had to lift another man up to vote.

Q. Did you see David Jackson or other person at said poll hand money out of the window to persons on the outside? State what you saw.—A. I did see David Jackson hand money to voters outside of the window; saw him do it several times. When I saw him doing it I said, "O, by God, look at the greenbacks. Let's wait and see if we can't get some of them." Cæsar Johnson then said, "No; perhaps they are running an independent ticket."

Cross-examined by contestee:

Q. Can you read or write?—A. No, I cannot; I am only a laborer.

Q. Did you get any of the greenbacks or money that was handed out?—A. I did not.

Q. Did your friend Cæsar Johnson get any?—A. No, sir.

Q. Why didn't you get some?—A. Because I was not voting the same ticket.

Q. Do you mean the independent ticket?—A. I mean I did not vote the independent ticket. I voted the Gla Republican ticket.

Q. Where was David Jackson standing?—A. In the house, near the window, where the voting was going on.

Q. Was he taking the ballots from the voters as they were handed in?—A. Yes, sir; he was.

Q. Did he take Cæsar Johnson's ticket when you raised him up to the window?—A. He did. I saw him take it.

Q. Could you see him plainly?—A. Yes, sir. He came to the window, and I could see him plainly from his waist up, and he could see me.

Q. What time of day was it when you went to the polls?—A. I went to the polls about 12 o'clock, and staid until night.

Q. Were you near where the voting was going on while you were there?—A. Yes; I was out in front of the window most of the time.

Q. Did you see any voting on sticks?—A. I did not see or notice any.

Q. From where you stood would you not have been likely to have seen the voting on sticks, if there had been any?—A. Probably if I had been noticing I would; but I did not notice, and there was such a crowd standing around the window.

Q. How far were you standing from the window?—A. Probably 10 or 20 yards, as near as I can come at it.

Q. Then all the voters that you noticed voted with their hands, did they?—A. Yes, sir.

Q. Who took their tickets?—A. David Jackson took their tickets in.

Q. Did Cæsar Johnson go to the polls with you?—A. He started when I did, but did not get there as soon as I did. I was there when he came up. He and I went home together.

Q. How many people do you think voted while you were there?—A. I can't tell; there were a good many of them; they kept voting until night.

Q. Do you think there were five hundred voted while you were there?—A. That would be hard for me to say, because I do not know that there were five hundred there in all or not.

Q. Give the names of all those whom you saw get greenbacks.—A. I did not know the men; they were strangers to me. I did not know any of the men on the ground except Cæsar Johnson.

Q. How much money did each of the men receive?—A. I could not tell, but there were sometimes three or four bills.

Q. Was there never more than three or four bills?—A. I never saw any more than three or four bills, as the men would take them and put them up so quick.

Q. How many men were there that you can swear you saw get greenbacks?—A. I saw about ten, as near as I can come at it.

Q. Now, how many of those men got as many as three bills?—A. I couldn't tell. Some of them came out in registration paper. I saw two of them that had that money, and one of the bills was large enough for a dollar or a five-dollar bill.

Q. Now, don't you know that it was Mr. Mayer that handed out all the registration papers?—A. No, sir; I don't know that; I know that he didn't hand me mine.

Q. How many kinds of tickets were voted there that day?—A. I saw but two kinds. I cannot read. There was a white ticket, U. S. Grant; that is, with Grant's picture on it, and I voted that kind. The other was a kind of bluish curtain-colored ticket on the back side.

Re-examined by contestant:

Q. What do you mean by the independent ticket?—A. I mean the Benham Republican ticket.

his
NOAH + LANE.
mark.

Sworn to and subscribed before me this 7th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Cæsar Johnson.*

CÆSAR JOHNSON, sworn for contestant, testified as follows:

Question. State your name, residence, and occupation, and where you were on the 2d of November last, the day of the general election.—Answer. My name is Cæsar Johnson; I live in Carroll Parish; am a farmer, leasing land from Mr. Tilford; was at poll No. 1.

Q. State where and how the voters voted at said poll while you were there, and how it was managed.—A. I voted at the window, and all others who voted with me at the same time did the same. I voted by the assistance of Noah Lane, who caught me under my arm and assisted me up so I could reach the window. I don't think a man standing on the ground near the window could see the ballot-box. I could not, I know.

Q. Did you or not see money passed out of the window to the voters with their registration-papers; and, if so, who did it?—A. I saw money passed out with registration-papers by David Jackson; I saw him do it several times.

Q. Did anybody speak to you about it at the time it was being done, and what did he say?—A. Yes, sir; Noah Lane spoke to me about it at the time, and said, "O, Johnson, look at the greenbacks; let's turn." I said, "O, no." He said, "Why?" and I said, "May be they are running an independent ticket." I voted the Gla Republican ticket, on white paper.

Cross-examined by contestee:

Q. Did you hear one man cry out, "O, Jackson, greenbacks;" and who was that man?—A. I did hear a man so cry out, but do not know the man.

Q. What kind of a looking man was he?—A. He was a black man, but I did not notice his features.

Q. Was he a tall man?—A. He was about the common height.

Q. Was he an old man?—A. No, sir.

Q. Did you notice particularly his age?—A. He looked quite young to me.

Q. Was he a fat man?—A. No, sir; he didn't look very fat.

Q. Was he a well-dressed man?—A. He looked to me to be poorly dressed.

Q. How far were you from him when he cried out, "O, Jackson, greenbacks?"—A. About 10 feet.

Q. Did he cry it out more than once?—A. No, sir.

Q. Can you read?—A. A little; coarse reading.

Q. Or write?—A. I can scratch a little.

Q. Are you a short man?—A. I am about 5 feet 2½ inches.

Q. When Lane helped you to put up your ballot, did he lift you off the ground, or did he stretch you up by assisting you by one arm?—A. He assisted me by lifting one arm, I at the same time helping myself up against the side of the house.

Q. Was there a pretty large crowd present when you got to the polls?—A. Yes, sir; a pretty large crowd.

Q. Did they all vote before you came away?—A. No, sir; I left them voting.

Q. How many do you think voted while you were there?—A. There was a pretty large crowd, but I cannot tell how many voted while I was there.

CÆSAR JOHNSON.

Sworn to and subscribed before me this 7th day of May, 1875.

S. DUNCAN GLENN,
*Notary Public.*

There is not a word other than the evidence here cited, in regard to this matter. We cannot believe that this evidence needs any serious consideration, as it will be regarded as not only extraordinary, but remarkable, that, at a public election, with crowds surrounding the place, and in full view of the voters, greenbacks should be handed out by the commissioner with the registration-papers, after the voters had deposited their ballots, and that no person at that election should have been able to have detected the fact or observed this conduct except these two colored witnesses. To our mind it is extraordinary that, out of all that crowd of 500-odd persons, with the candidates at the polls, watching the commissioners, not a single person other than Cæsar Johnson and Noah Lane could be found to testify to such misconduct. The evidence of Johnson and Lane is of such a character, taken as a whole, that, in our opinion, it would be discredited in any court of justice; and taken in connection with the circumstances surrounding the case, I cannot believe this committee is willing to say that it is worthy of serious consideration. It will be observed these men do not testify that they received any greenbacks themselves, but that they saw them given to others; but what is most remarkable, they cannot designate any person who received them, and no person is produced who did receive any greenbacks. T. B. Rhodes, one of the commissioners at this poll, testifies as follows (p. 46, record):

Q. Do you know a colored voter named Carson Johnson, and did you hear that he reported that "greenbacks" were handed out at the window at poll No. 1? And, if so, state what you know of him and of the story, and of the facts in the case.—A. I know him and heard him give his evidence to the effect stated before the district court. I know nothing

of him personally, but I do know that his statement that David Jackson, one of the commissioners, rolled up greenbacks in the registration-papers and handed them back to the voters, is untrue; because the tickets or ballots, together with the registration-papers, were handed up to David Jackson, who took the ballot and handed the registration-papers to me, which I indorsed "voted." Jackson then put the ballot in the box, and I handed the registration-paper to Mr. Mayer, who was acting as Democratic United States supervisor, and who handed it out to the voter. I never heard this report from any other source, and I don't believe it was possible to be true without my having some knowledge of it.

While David Jackson (p. 39) denies emphatically the statement of Johnson and Lane. His evidence upon the subject is as follows:

Q. Who handed back the registration-papers to the voters after they were indorsed by the commissioners?—A. They were handed back by myself or by Mr. E. Mayer, who claimed to be acting as the Democratic deputy United States supervisor.

Q. Was there or not any money handed back by yourself or any other person with the registration-papers?—A. There was not.

Q. Did or not you hear of any such report or charge being made during the day of election by any member of either political party?—A. I did not. I would must likely have heard any such report had it been made.

Is it not remarkable that, out of eleven witnesses called in reference to this poll, comprising the United States supervisor of election, the commissioners of the polls, and candidates upon the opposition ticket, only two witnesses could be found who knew anything in regard to this extraordinary conduct of Jackson? We dismiss this subject from further discussion, believing it too preposterous for further comment.

We now pass to the fairness of the election. We give all the evidence on this subject, to wit:

A. Cunningham, for contestant, p. 64, testifies:

Cross-examined by contestee:

Q. How do you class yourself politically?—A. I take no part in politics, but suppose I would be ranked as a Democrat.

Q. How long did you remain at poll No. 1 on the day of the election?—A. I suppose I was there about three hours.

Q. Was or not the election quiet, peaceable, and fair while you were present?—A. I heard no fussing, but there was considerable rushing and confusion around the window, caused, as I supposed, by their anxiety to vote early.

T. J. Galbraith, for contestee, pp. 28, 29, testifies:

Q. Were you present during the entire day at the election held at ward No. 1, held on 2d November?—A. I was.

Q. Did you pay strict attention to the manner in which the election was conducted as to its fairness or unfairness?—A. I did, and thought it a fair election.

Q. Did you hear any charges of unfairness made by either party during the day?—A. I did not.

Re-examined:

Q. Were you or were you not inside the room most of the day where the commissioners were, and therefore not in a position to know what was going on outside?—A. I think I was in and out of the room about equally during the day.

Judge C. E. Moss, for contestee, pp. 35, 43, 44, testifies:

Judge C. E. Moss, sworn for contestee, Frank Morey, testifies as follows:

Question. Please state your name, residence, and occupation.—Answer. My name, Charles E Moss, jr.; my residence, Carroll Parish; my occupation is parish judge.

Q. Where were you during the election on the 2d of November, 1874, and what do you know about the election?—A. I was at poll No. 1 on that day. I was there from daylight until 5 o'clock in the evening, being myself a candidate for parish judge and a nominee of one wing of the Republican party, there being two wings of the Republican party in this parish. I belonged to what was known as the Benham wing. I was very active all day about the polls, and if I had seen anything that was wrong or unfair I would have objected, being interested in having the election fairly held. At the time of the election I heard no charges of unfairness made, and it was generally conceded that the election was fairly held. I heard no quarreling or unkind words, and everything seemed to pass off pleasantly. Some time after, when the suit of Burton *vs.* Hicks was about being brought, I heard charges made of great frauds at that poll. I know of my own knowledge that these charges were false.

David Jackson, for contestee, pp. 38, 39, testifies:

Q. Did you have a good opportunity to see and to know how the election was conducted at that poll? And, if so, state what you know of it.—A. I had a good opportunity. The election was conducted peaceably, and as fairly as an election could be; I heard no charges of unfairness made by anybody; every voter had a chance to vote as he saw fit. Mr. Spann, the Democratic commissioner, kept the list of votes; Mr. Rhodes, the Republican commissioner, kept the tally-list, and I took the votes as they were handed in by the voters and put them in the ballot-box. The various candidates and others had access to our room in which we received the votes, so that they could see that the election was conducted fairly. There was no dissatisfaction expressed by any one as to the manner in which the election was conducted.

D. S. Vincent, for contestant, p. 63, testifies:

Q. Did you vote on that occasion, and why not?—A. I did not vote, though I could have done so; there was nothing preventing me, except I did not want to wait. There was no trouble that I saw about the poll; everything was peaceable and quiet.

Cross-examined by contestee:

Q. How do you rank yourself politically?—A. I am a Democrat, dyed in the wool.
Q. How long have you resided in this parish?—A. Twenty-five years.
Q. Are you not generally recognized in the community as a good, substantial citizen?—A. So far as I know; I have heard nothing to the contrary.

T. B. Rhodes, for contestee, pp. 42, 43, 46, 47, testifies:

T. B. RHODES, sworn for contestee, Frank Morey, testifies as follows:

Question. What is your name, residence, and occupation?—Answer. My name is Thomas B. Rhodes; my residence is in Carroll Parish; my occupation, a planter.
Q. Were you a commissioner of election at poll No. 1, Carroll Parish, at the election 2d November, 1874?—A. I was.
Q. Were you present at said poll during the entire day of the election?—A. I was.
Q. Did you see any fraud or ill-practices at the election held at that poll?—A. I did not.
Q. Did you hear of any at that time?—A. I did not.
Q. Did you take part in counting the votes?—A. I assisted in counting the votes.
Q. Were the votes fairly counted, and were the tally-lists and returns accurately made out?—A. They were, so far as I know.
Q. Was any one permitted to vote at that poll who did not present the proper registration-papers?—A. Not that I know of.
Q. Was there any Democrat present during the election at that poll?—A. There was; Mr. Spann, a commissioner, was present.
Q. Did he take exception to anything that was done in the conduct of the election?—A. He did not.

E. M. SPANN, Democratic commissioner, for contestee, pp. 45, 46, testifies:

Q. Did the commissioners of election at that poll give the voters reasonable opportunity to vote, and was it or not generally admitted that the election was conducted fairly?—A. I think they had ample opportunity to vote. I heard no complaint against its fairness until after the election was over.

Without going into further detail, taking all the testimony that has been adduced in regard to this poll, we are satisfied that it cannot be rejected for any legal reason, but are of the opinion that it should be counted. This poll gives Morey a majority of 536, which taken from Spann's majority of 992, would leave Spencer a majority of 456.

We now proceed to consider the second poll of Carroll Parish. It is admitted by both parties, contestant and contestee, that as to this ward there are no official returns, ballots or ballot-box, to be found, except a poll-list. They have been either abstracted or destroyed.

The first question to be determined is, what evidence is necessary to establish the vote cast at this poll? We are of the opinion that the best evidence to establish the actual vote cast at this poll is the evidence of the commissioners of election, and if it cannot be established by them, then by such other evidence as can be procured, and we are clearly of the opinion that the commissioners' evidence as to the vote cast at this poll is competent. We are sustained in this opinion by the

action of this House in the case of Adams *vs.* Wilson, Clark and Hall, 375, decided December 8, 1823, wherein the committee and the House held "that the testimony of the board of inspectors is competent, and ought to be received to correct any mistakes that may have occurred in returning the votes given at said election." If the commissioners' evidence is competent to alter or change the returns, certainly their evidence is competent to establish what the returns were at the poll. The best evidence, viz, the returns, having been lost or destroyed, secondary evidence is then admissible to establish what were the contents of the written instrument, viz, the returns. We understand the rule governing the admissibility of secondary evidence, with respect to documents, to be that proof of their contents may be established by secondary evidence, first, when the original writing is lost or destroyed; secondly, when its production is a physical impossibility, or at least highly inconvenient. Before, however, secondary evidence can be introduced there must be evidence showing that the documents once existed, and are lost or destroyed. In this case the proof establishes the fact that a search for the returns has been made where, by law, they ought to have been found, and that the search has been unsuccessfully made. This evidence was introduced by contestant, and the testimony of Galbraith, deputy clerk, shows that the returns from Carroll Parish, poll 2, are not on file in the clerk's office, the legal depository of them. Taylor, in his excellent work on evidence, says (section 401): "If the instrument ought to have been deposited in a public office or other particular place, it will generally be deemed sufficient to have searched that place, without calling the party whose duty it was to have put it there, or any other person who may have had access to it." Again (sec. 405): "The law does not require that the search should have been recent or made for the purposes of the cause, and therefore where a search was made among the proper papers three years before the trial this was held sufficient." But in this case Galbraith's testimony (page 28, record) is as follows:

Q. Have you not been the principal deputy-clerk of the court, and as such having the entire control of the said office during your occupancy?—A. I have, since July 26, 1873. This election was held November 2, 1874. This evidence was given April 27, 1875. In answer, whether any of the tally-sheets, returns, ballot-boxes, or other legal documents relating to the election had been on file or were on deposit at that time in the clerk's office, he says: "There have been none, except the tally-sheet handed me by the commissioner for the other ward, which tally-sheet was afterward taken out of my office and carried away."

The next interrogatory propounded to the witness is to this effect:

Q. Has diligent search been made for these ballot-boxes by yourself and others?—A. There has been.

Q. Do you know where these ballot-boxes and papers are?—A. I do not.

Certainly, under the rule governing the admissibility of secondary evidence, this testimony establishes the fact that proper search has been made for them in the place where they should have been found, and that the inquiry and search made failed to obtain any information in regard to them. Therefore it is clear that, in order to establish what the vote was which was cast at poll 2, there is no other method left to ascertain that fact than by secondary evidence. What are these returns? The answer naturally suggests itself that they are simply the record of the number of votes cast at the poll by the electors and the list of names voting at said poll; or, in other words, it is a record to secure the evidence of the act of the voters. By whom is this evidence compiled and by whom is the record of the evidence authenticated? It will not be denied that the evidence is compiled by the commissioners of elec-

tion, and this evidence is authenticated by them. Then, if the evidence of the voters is compiled by them and the record is completed by their acts, what better evidence is attainable than that of the commissioners themselves as to what the evidence is that this record contains? As before stated, the returns are but the evidence of the act of the voters, viz, as to the number of votes cast at the poll and for whom said votes were cast. We are not left, however, to secondary evidence as to the number of votes cast at this poll, for the poll-list is in evidence, properly authenticated and identified, giving the full number of votes cast at this poll, sworn to by the three commissioners authorized by law to hold the election at the said precinct, and is as follows:

EXHIBIT C.—CARROLL PARISH.—S. DUNCAN GLENN, NOTARY PUBLIC.

1. S. P. Bartley.
2. Abbe Richard.
3. Jo. Leddy.
4. Wm. A. Blount.
5. Andrew Hammond.
6. James Leddy.
7. Jasper Hughes.
8. Elias Smith.
9. B. M. Brorder.
10. Arthur Richardson.
11. B. J. Fowler.
12. Sam. Hogan.
13. Richd. Rowlett.
14. Geo. C. Benham.
15. Jno. Spinnetti.
16. J. W. Dunn.
17. Griffin Kelley.
18. Ben. Fleming.
19. Baker Smith.
20. Richd. Collins.
21. Anderson Murray.
22. Willis Hamilton.
23. George Green.
24. Chas. Fox.
25. Jerry Travis.
26. Harrison Johnson.
27. A. W. Roberts.
28. Lewis Warren.
29. Ned. Richardson.
30. C. Ed. Shearer.
31. Edmund Davis.
32. Esau Johnson.
33. London Peterson.
34. Zeke Christmas.
35. Henry Anderson.
36. David Katler.
37. Gus. Silvie.
38. Dick Stewart.
39. A. A. Harney.
40. Isaac Stewart.
41. Isaac L. Lewis.
42. Peter Stevens.
43. Jno. Pitts.
44. Edward Russell.
45. Casey Smith.
46. E. J. Delaney.
47. Hugh Laddy.
48. Wm. Davis.
49. Tom Laddy.
50. Alfred Collins.
51. Mat. P. Fisher.
52. Isaac Johnson.
53. Wm. Lee.
54. S. D. Glenn.
55. George Day.
56. Adam Sheppard.
57. Henderson Stephens.
58. Alfred Brown.
59. Fred. Jenkins.
60. Jim Collins.
61. Preston Sanders.
62. Wm. Thomas.
63. Nelson Harris.
64. Jno. O'Brien.
65. Spencer Garland.
66. Allen Williams.
67. Geo. Washington.
68. Moses Cato.
69. Emmet Williams.
70. Ben. B ilt.
71. Joe Robinson.
72. Robt. Shaw.
73. Sylvester Peterson.
74. Alf. Washington.
75. W. D. Ball.
76. James Garland.
77. Wm. Smith.
78. Geo. Graves.
79. Wm. H. Myers.
80. Jack Toliver.
81. Albert Jordon.
82. Cyrus Dorsey.
83. Richard Jones.
84. Wm. Rakestrow.
85. Jacob Watson.
86. W. J. Kersey.
87. Frank Stepney.
88. Rebuen Turner.
89. Leroy Townsend.
90. Peter Barker.
91. Jno. Jourdon.
92. Dennis Winston.
93. Frank Aikles.
94. Sam. Johnson.
95. Reuben Young.
96. Jno. Atlas.
97. Henry Phillips.
98. Granville Wilson.
99. Castle Green.
100. Ananias Robinson.
101. Jerry Petri.
102. Manuel Douglass.
103. Alonzo Davis.
104. Stepney Gibbs.
105. Bob Lewis.
106. Willis Neal.

EXHIBIT C—Continued.

107. Paul Ashley.
108. Mat. Waden.
109. Andrew R. Anderson.
110. C. F. Errickson.
111. Nelson Ware.
112. Jno. Roberts.
113. Victor Esclapon.
114. Cozan Kirk.
115. James Strone.
116. John Payne.
117. Wesley Turner.
118. Eli Piles.
119. Henry Ball.
120. Jackson Edwards.
121. William Ray.
122. Jno. Forrest.
123. Reuben Johnson.
124. Henry Turner.
125. R. K. Joyne.
126. Dan'l Jones.
127. Webster Brown.
128. Felix Harris.
129. Spencer Hamilton.
130. James Zandy.
131. James Green.
132. Chas. McCaleb.
133. King Atlas, sr.
134. Aaron Henderson.
135. Wm. Crenshaw.
136. Robt. Franklin.
137. E. J. Adams.
138. Chas. Franklin.
139. Bohannus Harris.
140. Bud Dickson.
141. Simon Tyler.
142. Sanders Ford.
143. Archie Crenshaw.
144. Sam Lackey, sr.
145. Joseph Price.
146. Alfred Buckner.
147. Jim McCay.
148. Sam. Marshall.
149. Luke Williams.
150. Anderson Crenshaw.
151. Peter Maxwell.
152. Silas Shelby.
153. Lafayette Cook.
154. Isaiah Kelley.
155. Wm. Huston.
156. George Sanders.
157. Pleasant Harris.
158. Granderson Jones.
159. Oliver Washington.
160. Wm. Odam.
161. Dallas Brown.
162. Thos. Day.
163. Woodford Banks.
164. Kye Nelson.
165. Levi Gardner.
166. Lewis Kelley.
167. Anderson Phillips.
168. Manuel Phillips.
169. John Walker.
170. George Winter.
171. Wm. Atlas.
172. Wash Vandevere.
173. George Smith.
174. Henry Mercer.
175. Sam. Hurt.
176. Allis Nelson.
177. Wash Graham.
178. Ben Daly.
179. David Montague.
180. Lue. Patterson.
181. Warren Jones.
182. Shed. Bucknet.
183. James Ware.
184. Enis Davis.
185. Albert Barnett.
186. Isaac Elliott.
187. Wm. Howell.
188. Richmond Birdsong.
189. Henry Lewis.
190. John Jones.
191. Joe Robinson.
192. Wm. Douglass.
193. Ned Banks.
194. N. Houghton.
195. Emanuel McDaniel.
196. E. L. Lorche.
197. Wm. N. White.
198. Fred. Jordan.
199. Reuben Christmas.
200. Henry Grace.
201. Chas. Newton.
202. Steven Generals.
203. Walter Worley.
204. Green Phillips.
205. Henian Henderson.
206. Dan. Parks.
207. Gus. Turner.
208. Jones Mitchell.
209. Miles Perkins.
210. Peter Fields.
211. Jno. Crawford.
212. Henry Aldrich.
213. Henry Haywood.
214. Dennis Smedley.
215. Bailey Butler.
216. Squire Thompson.
217. Richmond Brown.
218. Wm. Brown.
219. Joe McClure.
220. Bob Porter.
221. Clem Brown.
222. Alec McGoric.
223. Lewis Carson.
224. Thornton Smith.
225. Joshua Terr.
226. Henry Williams.
227. Cyrus Hendley.
228. Tom Collins.
229. Emanuel Bayley.
230. Timothy Byrne.
231. Chas. Walker.
232. York Boyd.
233. Titus Stevens.
234. Marsh Dash.
235. Lewis Daniels.
236. Frank Phillips.
237. Walker Wade.
238. Theo. Salter.
239. Wm. James.
240. Wesley Onrus.
241. Jno. Smith.
242. Thomas Watson.

EXHIBIT C—Continued.

243. Wig Boll.
244. David Winter,
245. Shack Brayson.
246. Matt. Taylor.
247. Ed. Williams.
248. Anderson Goodman.
249. Louis Karr.
250. Jim Wilson.
251. Ananias Williams.
252. Thos. Crawford.
253. Perry Phillips.
254. Balin Branch.
255. Wm. Minor.
256. Thos. Creecy.
257. Adam Beard.
258. Warren Dobson.
259. Henry Johnson.
260. Wm. Watson.
261. Andrew Knight.
262. Willis Ward.
263. Sam Matthews.
264. Henry Williams.
265. Joseph Jackson.
266. Robert Gardner.
267. Cyrus Randall.
268. Chas. Day.
269. John Gross.
270. Eli Crawford.
271. Isaac Prater.
272. Dennis Wilkenson.
273. Billy Williams.
274. Henderson Stepney.
275. Silas Garner.
276. Geo. Washington.
277. Jerry Briscoe.
278. Annias McClellan.
279. Coter Lewis.
280. Allen Parker.
281. Paul Jones.
282. John Clorx.
283. George Allen.
284. Robt. Adams.
285. Chapman Preston.
286. Toney Brackett.
287. Albert Lee.
288. Henry Thomas.
289. Anthony Pasten.
290. Jerry Key.
291. Hiram Hawkins.
292. Littleton Stewart.
293. Wm. Smiley.
294. Elias Smoot.
295. Wm. Page.
296. Henry Hamilton.
597. Morton Smith.
298. Willis Whiting.
299. Robt. Gilliard.
300. Saml. Ross.
301. Tom B. Overton, jr.
302. James Reed.
303. Dennis Walker.
304. Wm. Kleinpeter.
305. Parker Joniter.
306. Sam. Lackey, jr.
307. Jos. McDonald.
308. Cyrus Castin.
309. Caleb Harris.
310. Ben. Rogers.
311. Geo. J. Hook.
312. Wm. Pendleton.
313. Edmund Costers.
314. Henry Franklin.
315. Geo. Keiser.
316. Nathan Smedley.
317. Henry Mitchell.
318. Anthony Weatherspoon.
319. Thomas Word.
320. Abram Haley.
321. Ross Thomas.
322. Anthony Easby.
323. Ma. Jones.
324. Henry Sutton.
325. Mike Tompkins.
326. Ephraim Reed.
327. Wm. Fuqua.
328. Jo. Johnson.
329. George Franklin.
330. Chas. Smith.
331. Rich'd White.
332. M. Duborn.
333. Lewis Welton.
334. Wm. Robinson.
335. Wm. Jones.
336. Moses Davis.
337. Chas. Simms.
338. George Stone.
339. Sam Turner.
340. Houston Reed.
341. Winston Cowen.
342. Pleasant Holloway.
343. Jessie Jenkins.
344. Spencer Helm.
345. Jno. Smith.
346. Frank Corter.
347. James Smith.
348. Thos. Stone.
349. Wesley Wilson.
350. Jno. W. Groves.
351. James Jennings.
352. Robert Lownds.
353. Hiram Henderson.
354. Rayford Franklin.
355. Jonas Ceaser.
356. McKinsey Woodson.
357. Andrew Griffin.
358. J. Dobbyns.
359. Wm. Eggleston.
360. Henderson Taylor.
361. Henry Parker.
362. Aaron Morgan.
363. Henry Parks.
364. Chas. Perkins.
365. Saml. Byns.
366. Fielding Gains.
367. David Williams.
368. Thos. Winston, jr.
369. Peter Alexander.
370. Marshal Harris.
371. Enos Harris.
372. Richd. Adams.
373. Wm. Gardner.
374. Chas. Staples.
375. Lymas Sanford.
376. Sol. Johnson.
377. Israel Henson.
378. Robt. Reynolds.

EXHIBIT C—Continued.

379. John Taylor.
380. Peter Harris.
381. Anderson Kennedy.
382. Primus Perkins.
383. Wm. Lewis.
384. Wm. Lewis.
385. Mingo Hopkins.
386. Sam. Godwin.
387. Jackson Harris.
388. Sol. Mallory.
389. Gabe Bell.
390. Geo. Washington.
391. Thos. Blakely.
392. Robt. Hendricks.
393. Jackson Jones.
394. Moses Harris.
395. Mike Jones.
396. Isaac Jones.
397. Genl. Johnson.
398. John Farwell.
399. A. T. Gipson.
400. Thos. Gardner.
401. Stepney Brown.
402. Wm. Thomas.
403. Bud Sanders.
404. Anderson Harris.
405. Hayden Summers.
406. Sam. Williams.
407. Wm. Freeze.
408. Wiley Dunn.
409. Jo. Williams.
410. Geo. Tyler.
411. Wallace Bowman.
412. Richd. Wright.
413. Joe Ballard.
414. Jeff Therrel.
415. Jack Watts.
416. Robt. Parker.
417. Harrison Robinson.
418. Hoyt Clements.
419. Wm. H. Barber.
420. Albert Reed.
421. Hiram Dunn.
422. Wm. Haley.
423. Jackson Curry.
424. Harry Harris.
425. Emanuel Harris.
426. James Grant.
427. Jno. Chambliss.
428. Jno. Wilson.
429. Jacob Wore.
430. Jno. Randall.
431. Henry Taylor.
432. King Atlas, jr.
433. Robt. Martin.
434. Ky. Lewis.
435. Phil. Caleb.
436. Thornton Washington.
437. Jno. Miller.
438. Fayette Johnson.
439. Madison Vaughn.
440. Danl. Chase.
441. Wm. Nolan.
442. Jack McDaniels.
443. Robt. Talbert.
444. Richard Henderson.
445. Harrison Hughes.
446. Anderson Walker.
448. Harry Hill.
449. Edward Johnson.
450. Dallas Panel.
451. Chas. Alexander
452. James Owen.
453. Geo. Jones.
454. Peter Smith.
455. Thos. Minor.
456. S. P. Bernard.
457. Jno. Stockard.
458. Nathan Shelby.
459. Henry C. Smith.
460. Jack Williams.
461. Martin Brows.
462. F. F. Montgomery.
463. F. R. Bernard.
464. Essex Haywood.
465. Joe Murray.
466. Jno. Baptist.
467. Wm. Bonds.
468. Jesse Shelby.
469. Wm. Allcot.
470. Joshua Rice.
471. A. W. Green.
472. Ben. Evans.
473. Wm. Dorsey.
474. Wm. Walton.
475. Moses Giles.
476. Geo. Knox.
477. Henry Wright.
478. Robt. Simms.
479. Saml. Lewis.
480. Wm. Adams.
481. J. G. Miller.
482. Randall Colrille.
483. Geo. Carter.
484. Peter Griffin.
485. Isaac Jackson.
486. Peter Biggs.
487. Alex. Dyke.
488. Granville Peters.
489. Chas. Williams.
490. Andrew Kearns.
491. Richard Robinson.
492. Amos Hopkins.
493. Jonas Monroe.
494. Philip Hopkins.
495. King Willis.
496. Wm. B. Thomas.
497. Eph. Stewart.
498. Henry Raney.
499. Jno. Robinson.
500. Jerry Edwards.
501. Geo. Johnson.
502. Warren Tolliver.
503. George Williams.
504. Henry Maxwell.
505. Anthony Hurd.
506. G. S. Dorsey.
507. Reason Williams.
508. C. F. Pagh.
509. Wm. Duncan.
510. Peter Harrison.
511. S. A. Lorche.
512. Joseph Brown.
513. W. P. Childress
514. Peter Turner.
515. Danl. Logan.

EXHIBIT C—Continued.

516. Miles Brown.
517. James Edwards.
518. D. L. Morgan.
519. Ephriam Williams.
520. Lawson Saunders.
521. Durrel Ellis.
522. John Landener.
523. Moses Jackson.
524. Tom January.
525. Marshal Kennedy.
526. Edwd. Sparrow.
527. Wm. Riley.
528. D. C. Jenkins.
529. James Howard.
530. Jno. W. McCue.
531. Chas. Henderson.
532. Sike Richardson.
533. Wm. Mason.
534. Henry Brown.
535. Isaiah Johnson.
536. Emanuel Chapman.
537. Jackson Bowers.
538. L. B. Clarkson.
539. Lorrins Perkins.
540. Ed. Dunn.
541. Wm. Parker.
542. Jno. Brackett.
543. Lewis Williams.
544. Ben. Overton.
545. Baxtom Hoare.
546. Ki Soloman
547. Abe Williams.
548. Green Guino.
549. Alex. Armstrong.
550. Danl. Rice.
551. H. C. Dobyns.
552. Hiram Hatcher.
553. Jno. M. Jones.
554. Martin Wilbur.
555. Jno. Davenport.
556. Jacob Hall.
557. Wm. Bridges.
558. Alex. Hill.
559. Danl. La Grand.
560. James Jackson.
561. Anthony White.
562. Jackson Anderson.
563. Robt. Marshall.
564. Pope Robinson.
565. Geo. Young.
566. C. A. DeFraner.
567. Cyrus Chambers.
568. Coleman Tucker.
569. Morris Evans.
570. Alex. Carter.
571. Robt. Gilmore.
572. Thos. Winston.
573. Gabriel Cole.
574. I. N. Kent.
575. Frank Tyson.
576. Jno. Mellon.
577. Lewis Gregory.
578. Jno. Ranson.
579. Jeff. Rogers.
580. Jno. Melton.
581. Aaron Cooke.
582. N. D. Ingram.
583. Simon King.
584. C. M. Pilher.
585. Dan. Hawkins.
586. Edward Campbell.
587. Ned Carr.
588. E. S. Willson.
589. C. H. Webb.
590. Nat Burrell.
591. C. J. Irrant.
592. L. G. Balfood.
593. M. S. Powell.
594. H. Cherry.
595. James King.
596. Geo. Jones.
597. Taylor Hart.
598. J. W. Montgomery.
599. Richd. Lee.
600. James McGuire.
601. R. W. Williams.
602. Henderson Dickson
603. Frank C. Taylor.
604. Wm. Matley.
605. Dan. Moulton.
606. Alex. Harris.
607. Isham Triskand.
608. Wm. Henderson.
609. Garey Hood.
610. Mike Roach, jr.
611. Horace Thomas.
612. Isaac Miller.
613. Ned Richardson, jr.
614. B. P. Shelby.
615. E. H. Davis.
616. Geo. Blackburn.
617. Ed. F. Newman.
618. Mat. Smith.
619. Geo. Harris.
620. Peter Jackson.
621. Golden Williams.
622. Henry Motley.
623. Elias Burley.
624. S. T. Le Moy.
625. Jno. Wiggins.
626. W. R. C. Lyons.
627. Wm. Williams.
628. B. H. Lanier.
629. T. F. Montgomery.
630. Jno. Stewart.
631. B. Leddy.
632. S. T. Austin.
633. Griffin Storks.
634. Miles Cormick.
635. Andrew Atlas.
636. John Martain.
637. Edmund Brown.
638. Wash. Duncan.
639. John Robinson.
640. Wm. T. Carver.
641. Jason Hamilton.
642. Jordan Robinson.
643. Mat. McAllister.
644. Anthony Manson.
645. Solomon Walker.
646. Wiley Rose.
647. W. L. McMillen.
648. F. L. Myers.
649. Jno. A. Grest.
650. Jno. Byrne.
651. Chas. Wright.
652. O. C. Wessoman
653. F. M. Hays.

EXHIBIT C—Continued.

654. J. A. Delauney.
655. Chas. Hicks.
656. James Woolrich.
657. Henry Day.
658. Major F. Cook.
659. M. J. Groce.
660. David Hall.
661. C. W. Mamilton.
662. Jesse Rossell.
663. M. A. Sweet.
664. Chas. Dields.
665. Lewis Hite.
666. Nat Murfre.
667. Hugh McGuire.
668. Lloyd Davis.
669. Jerry Waterman.
670. Edward Jackson.
671. Richd. Stewart.
672. Z. S. Malbry.
673. F. M. Hoppin.
674. Henry Douglass.
675. Joseph Craig.
676. I. L. Murry.
677. W. W. Hunter.
678. R. M. Lockey.
679. W. D. Childress.
680. Thos. Hamilton.
681. John J. Parit.
682. Alfred Whitfield.
683. Wm. Maguire.
684. W. B. Dickey.
685. Saml. Chapman.
686. C. R. Egelly.
687. Lewis Irwin.
688. Irvin Davis.
689. John Hamilton.
690. Geo. Johnson.
691. Walter West.
692. Aaron Coleman.
693. Peter Davis.
694. Alfred Crenobow.
695. John Fitzgerald.
696. J. L. Davis.
697. B. F. Therrel.
698. Wm. Brown.
699. W. D. Christian.
700. J. M. Kennedy.
701. W. W. Benham.
702. Saml. Robinson.
703. F. B. Watkins.
704. Lewis Mitchell.
705. Simon Lewis.
706. F. M. Melrose.
707. Lewis J. Ritter.
708. J. E. Leonard.
709. J. D. Tompkins.
710. Thos. Johnson.
711. E. C. Manning.
712. Thos. Chapman.
713. Roland Perkins.

STATE OF LOUISIANA, *Parish of Carroll:*

We, the undersigned, duly commissioned and sworn commissioners of election in and for the second ward, parish and State aforesaid, do solemnly swear (or affirm) that the foregoing list of voters, in and for said ward, is true and correct; so help us God.

W. W. BENHAM.
TOM. L. MONTGOMERY.
S. L. MURRAY.

Sworn and subscribed to before me this 2d day of November, A. D. 1874.

STERLING T. AUSTIN, JR.,
*Justice of the Peace.*

There is no evidence contradicting this poll-list, but it stands as admitted evidence of the number of votes cast at this poll, which was 713. It is not contended by contestant that a single man upon this list who voted was not a legally qualified elector, nor has any testimony been adduced tending to prove that these 713 persons did not vote on November 2, 1874, at poll No. 2, in Carroll Parish. We understand that the elections are simply the method whereby the citizens of the country may manifest their choice or preferences, and when they have proceeded in accordance with law, and manifested through legal forms their choice or preference by the ballot-box, their right and privilege so to do will not be taken away from them as long as their preference or choice can be ascertained. Did these 713 electors, at poll 2, Carroll Parish, November 2, 1874, in accordance with law, express their choice or preference? Secondly, can that choice or preference be ascertained by the evidence before us? The law governing this subject, as laid down by all writers, is "that to set aside the returns of an election is one thing; to set aside the election itself is another and a very different thing. The returns from a given precinct being set aside, the duty still remains to let the election stand. The return is only to be set aside, as we have

seen, when it is so tainted with fraud or with the misconduct of the election-officers that the truth cannot be adduced from it. The *election* is only to be set aside when it is impossible, from any *evidence* within reach, to ascertain the true result; when neither from the returns nor from other *proof*, nor from *all together*, can the truth be determined. It is important to keep this distinction in mind."

Again, quoting from Brightley's Election Cases, section 551, referring to the authorities there cited, the supreme court of Pennsylvania, in Chadwick *vs.* Meldin, said: "That there is nothing which will justify the striking out of an entire division but an inability to decipher the returns, or a showing that not a single legal vote was polled, or that no election was legally held. Undoubtedly the general rule is that if the legal votes are cast in good faith by honest electors, it is the duty of the court or tribunal trying a contest to ascertain their number, and give them due effect, notwithstanding misconduct, or even fraud, on the part of the election officers. Such fraud may destroy the value of the officer's cer-certificate, and may subject him to severe punishment, but the innocent voter should not suffer on that account." "Indeed, nothing short of the impossibility of ascertaining for whom the majority of votes was given ought to vacate an election." (McCrary, 304.)

In State *vs.* Steers, Brightley's Contested Cases, p. 303, it was held that the governing principle in all cases is clearly to ascertain the will of the voters. Again, the committee of this House, in Colden *vs.* Sharpe, C. & H., 369, says: "The committee will forbear from exhibiting any argument to prove the votes thus fairly and honestly given ought not to be lost or set aside for any omission or mistake of any of the returning officers. It is conceived to be entirely unnecessary to prove that that which has been the uniform decision of the House of Representatives ever since the formation of the government has been correct."

In Weaver *vs.* Given, Brewster's Reps., pp. 144–'5, "careless, ignorant, or even willful neglect of the election-laws cannot operate to annul an election." Bearing upon the same point, in Flanders *vs.* Hahn, 1st Bartlett, 438, is the following: "A disregard of a mere directory provision of the law cannot annul an election carried on with all the essentials of an election, and with perfect fairness."

In McHenry *vs.* Yeaman, same, p. 550, "occasional irregularities should not vitiate an election." In Covode *vs.* Foster, 2d Bart., 614, it was proved that William Spears was brought in as an officer during the counting of the votes, after the election was closed, to take the place of Mr. Hurse, the Democratic clerk, who was taken ill. Mr. Spears was not sworn. Hurse subsequently signed the returns. Mr. Randall, in his very able report commenting on this evidence, says: "We do not consider that the temporary introduction of Mr. Spears should impair the validity of the poll. He did not force himself in, nor was he objected to by any. He performed his duty with fairness and proper decorum." In Blair *vs.* Barrett, 1 Bart., 315: "Honest electors should not be disfranchised, and their voice stifled in the mere omission of the officers of election to take the oath of office." In Mallory *vs.* Merall, C. & H., 328: "Votes fairly given may be counted in favor of the party, though they have never been returned to the proper State authorities, default of return not being chargeable on said party."

In Barnes *vs.* Adams, 2 Bart., 768, reported by Hon. George W. McCrary, which was adopted by the House, we find the following: "If this House shall establish the doctrine that an election is void because an officer thereof is not in all respects duly qualified, notwithstanding it may have been a fair and free election, the result will be very many

contests, and, what is worse, injustice will be done in many cases. It will enable those who are so disposed to seize upon a mere technicality in order to defeat the will of the majority." From these authorities, we think it is clear that an "election is complete when the electors have delivered their suffrages into the hands of the legal depositary; that no mistakes can alter the result; that it is the duty of the House to ascertain the fact as to the actual vote cast by such evidence as it may choose to admit. A different construction may deprive this body of the most effectual safeguards of their political rights. It would, in effect, be an admission that the honorable House must be composed of such as the officers of towns or parishes might think proper to send, and not such as the freemen had elected, and open the door to great frauds and abuses."

As to the first proposition, viz: "Did these 713 electors of Carroll Parish, on November 2, 1874, express their choice or preference for member of Congress?" the evidence of both contestant and contestee proves that they did. There can be no dispute on this point. It remains, then, to answer the second proposition, viz: "Can that choice or preference be ascertained from the evidence before us?" And, thirdly, was the election free and fair? Assuming that the evidence of the commissioners and those employed in holding and conducting the election is competent, we now proceed to present all the evidence, both of contestant and contestee, as to the number of votes polled.

W. W. Benham, one of the commissioners of election, and witness for contestee, p. 50, record, testifies:

Q. Of the votes cast at poll No. 2, state if you know how many were cast for W. B. Spencer and how many for Frank Morey, respectively, for Congress.

(Contestant objects to this question on the grounds heretofore stated.)

A. Upon summing up the tally-sheets on Congressional vote, there were found to be three or four votes less on the Congresional votes than the number of votes shown by the list. The vote for Spencer was either forty-nine or fifty; and the balance of the vote, less the three or four who did not vote for Congress, was the vote received by Frank Morey—six hundred and sixty or six hundred and sixty-one.

Q. In voting at that election, were or not all the candidates voted for on one ticket or ballot?—A. The names were all on one ticket.

Q. Then, when you state that there were three or four less votes for candidate for Congress than for other candidates, do you mean that the names of the candidates for Congress were erased from the three or four tickets?—A. I do.

Q. Was or not the result of the vote given to the United States supervisor or other persons present or publicly announced, as soon as the result was ascertained?—A. A memorandum of the vote was taken from the tally-sheets by Mr. Lanier and Capt. W. B. Dickey.

W. B. Dickey, witness for contestee, swears (p. 54, record):

Q. How long were you at that poll on that day and immediately afterward?—A. Was there all day until the poll closed. At the closing of the poll I retired, and returned to the poll between 12 and 1 o'clock that night, when they were still engaged in counting the votes, where I remained until the counting was completed. When I came in between 12 and 1 o'clock at night, I took the place of Thomas F. Montgomery, Democratic commissioner at that poll, in keeping one of the tally-sheets, and remained until the count was finished.

Q. Did you or not learn the result of the vote cast at that poll when the count was completed? And, if so, state what it was, if you recollect.

(Contestant objects to this question.)

A. I think the entire number of votes cast at said poll was seven hundred and nineteen. The vote for senator was two hundred and eighty-two for Gla and four hundred and twenty-seven for Benham. There were forty-nine for Spencer for member of Congress, and for Morey six hundred and sixty-four or five for Congress. I do not recollect the vote cast for State treasurer, but that Moncure got about the same vote as Spencer did, and Dubuclet about the same vote as Morey did.

Q. Did you take any memoranda of any part of the result of the election at poll No. 2; and, if so, does the statement that you have made with regard to the vote for member of Congress agree with the memorandum that you took at the closing of the count?

(This question objected to by contestant.)

A. I did take a memorandum of the votes so far as the candidates for senator, members of

Congress, and house of representatives, and the memoranda, so far as Congress is concerned, agreed with my testimony on that point. I have lost all my memoranda except that of senator, or misplaced them.

### And on cross-examination by contestant, he swears:

Q. You state that you were not present during all the time that the votes were being counted and tallied. Do you know of your own knowledge the truth of the statement of the votes given by you?—A. I only know that the three tally-sheets kept agreed at the end of the counting. I do not know of my own knowledge that these tally-sheets were correctly kept during the whole time of counting, as I was not present all the while. I know that mine was correctly kept from the time that I commenced keeping it.

Q. Are you positive about the Congressional vote, and have you never stated it differently?—A. I am positive about the Congressional vote, and do not recollect of ever having stated it differently.

### B. H. Lanier, witness for contestee, swears (pp. 48–'9):

I remained at the polls until after the votes were counted, and assisted in keeping the tally-sheets.

Q. State, if you know, what the total vote was that was cast at that poll, and state the vote that was cast for the candidates for Congress, if you know.

(Contestant objects to this question, as heretofore.)

A. According to the best of my recollection, the entire vote for Congressional candidates was something over seven hundred. I think Spencer received forty-eight, forty-nine, or fifty votes, and Morey the balance of the total vote.

Q. Were or not several tallies kept by different parties present; and, if so, were or not they kept under the direction and supervision of commissioners at the poll?—A. There were three tally-sheets kept under the direct supervision of the commissioners at poll No. 2. One of these tallies I assisted in keeping. Those who kept each tally relieved each other from time to time in the labor.

Cross-examined:

Q. Did you keep a tally during the whole time and continuously while that vote was being counted?—A. I did not. I think it took about twenty-four hours to count the vote, and it would have been impossible almost for a man to have tallied continuously for that time.

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### W. A. Blacut, called by contestant (pp. 60, 61), swears:

Q. Did you or not see the tally-sheet and other papers of poll No. 2, when the counting and tallying at that poll was completed?—A. I saw the list of voters who had voted and the tally-sheets about 8 o'clock Tuesday night, after the votes in the box had been called. The tally-sheets were not then cast up and carried out, nor signed by the commissioners; but Mr. Dickey figured up for his use and mine the number of votes that were cast for two of the candidates, to wit, Gla and Benham, candidates for State senate.

Q. Please state what that vote was.

(Objected to by contestant.)

A. The vote was, Gla, two hundred and eighty-two; Benham, four hundred and twenty-seven.

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(Contestant objects to this as heretofore, as incompetent evidence.)

A. I did take a memorandum, and it was sixty-five votes.

Q. Have you ever made any statement of the election in Carroll Parish to the chief supervisor for this State of this judicial circuit at New Orleans?—A. I sent a statement to A. J. Aiken, at New Orleans, to be delivered to the Democratic central committee, giving a statement such as I got from deputies I appointed at different polls, but who were not appointed by Judge Woods, and whom I appointed, supposing I had the right to do it. I knew nothing about the correctness of the statements I got from the deputies.

Re-examined by contestant:

Q. You say you counted sixty-five tallies on the tally-list of poll No. 2 for Spencer. From your knowledge of the persons voting at this poll, do you not believe that he received more than that vote in point of fact?

(Objected to by contestee.)

A. From my knowledge of persons voting at said poll, and the list of voters, I think Spencer received thereat more than sixty-five votes.

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(Contestant objects to this question.)

A. I think the entire number of votes cast at said poll was seven hundred and nineteen. The vote for senator was two hundred and eighty-two for Gla and four hundred and twenty-seven for Benham. There were forty-nine for Spencer for member of Congress, and for Morey six hundred and sixty-four or five for Congress. I do not recollect the vote cast for State treasurer, but that Moncure got about the same vote as Spencer did, and Dubuclet about the same vote as Morey did.

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Cross-examined:

Q. Did you keep a tally during the whole time and continuously while that vote was being counted?—A. I did not. I think it took about twenty-four hours to count the vote, and it would have been impossible almost for a man to have tallied continuously for that time.

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Q. Did you or not see the tally-sheet and other papers of poll No. 2, when the counting and tallying at that poll was completed?—A. I saw the list of voters who had voted and the tally-sheets about 8 o'clock Tuesday night, after the votes in the box had been called. The tally-sheets were not then cast up and carried out, nor signed by the commissioners; but Mr. Dickey figured up for his use and mine the number of votes that were cast for two of the candidates, to wit, Gla and Benham, candidates for State senate.

Q. Please state what that vote was.

(Objected to by contestant.)

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(Contestant objects to this as heretofore, as incompetent evidence.)

A. I did take a memorandum, and it was sixty-five votes.

Q. Have you ever made any statement of the election in Carroll Parish to the chief supervisor for this State of this judicial circuit at New Orleans?—A. I sent a statement to A. J. Aiken, at New Orleans, to be delivered to the Democratic central committee, giving a statement such as I got from deputies I appointed at different polls, but who were not appointed by Judge Woods, and whom I appointed, supposing I had the right to do it. I knew nothing about the correctness of the statements I got from the deputies.

Re-examined by contestant:

Q. You say you counted sixty-five tallies on the tally-list of poll No. 2 for Spencer. From your knowledge of the persons voting at this poll, do you not believe that he received more than that vote in point of fact?

(Objected to by contestee.)

A. From my knowledge of persons voting at said poll, and the list of voters, I think Spencer received thereat more than sixty-five votes.

Recross-examined by contestee:

Q. Do you of your own knowledge, except as derived from the tally-sheet, know that Spencer received sixty-five votes at poll No. 2?

(Contestant objects to this question.)

A. Of my own knowledge, I don't know.

By an examination of all the testimony introduced it will be observed that all the evidence as to the actual vote cast at this poll, with the exception of that of one witness, was introduced by contestee. Montgomery, contestant's witness, swears that he signed all the papers that he believed were necessary according to law. He swears positively that he signed the poll-list, heretofore commented upon, and nowhere is this poll-list contradicted. We, therefore, have the evidence uncontradicted that 713 persons did vote at this poll. The highest number of votes which contestant can possibly claim by the evidence is 65, which is sworn to by W. A. Blount, the United States supervisor at that poll, who says that he took a memorandum of the vote for Spencer at that poll, and that the vote was 65. This witness is contradicted by three other witnesses, to wit, Benham, one of the commissioners, who swears that he counted all the votes, says that Spencer's vote was 49 or 50; and is corroborated by W. B. Dickey, appointed by the commissioners to keep the tallies (as Montgomery testifies), Dickey swearing positively that Spencer received 49 votes at this poll; and B. H. Lanier swears that Spencer's vote was 49 or 50. It certainly cannot be claimed by contestant that he is entitled to any more votes than the highest number that he has proven. Notwithstanding this witness, who testifies that Spencer received 65 votes, is contradicted by three other witnesses, we concede contestant 65 votes. Benham swears that there were four blank votes cast. Adding the four blank votes to the 65 votes conceded to Spencer, we have 69 votes to be deducted from 713, which leaves the number sworn to and admitted by contestant's evidence, viz, 644, the lowest number which can possibly, from the evidence, be counted for Morey. Contestant does not attempt to disprove that these votes, 644, were cast for Morey. Nowhere in his evidence in rebuttal is there one word of evidence upon the subject; showing that contestant puts his claim upon the ground that Carroll Parish should be rejected by the committee on account of the loss of the returns, and by this method obtain the seat to which he was not elected. No testimony adduced shows that Morey, in any manner or form, was responsible for any of the negligence or misconduct of any of the election commissioners or officers. Nor does the contestant, by any evidence, prove that contestee's partisan friends were responsible for any of these irregularities or abuse. We now come to consider the fairness of the election.

*Poll 2, Carroll Parish.*

The only specific charge of contestant in his notice of contest touching the election at this poll is as follows:

At ward or poll No. 2 in said parish, on said 2d November, 1874, the said George C. Benham and others of your partisans did, by unlawful and violent conduct and threats, intimidate the colored voters of said parish, and snatched their ballots from their hands as they approached the polls to vote, and forced them to take and vote other ballots than those they had and were going to vote, thereby wrongfully and fraudulently procuring, by force and intimidation, votes in his and your interest; which violent conduct was persisted in throughout said day at said poll, in violation of the freedom of election secured by law.

Contestant abandoned this charge and took no evidence in support thereof.

All the witnesses who were examined in this connection by contestant

and contestee are T. F. Montgomery and W. W. Benham, Democratic and Republican commissioners of elections at that poll, respectively; M. A. Sweet, B. H. Lanier, and W. B. Dickey, who assisted in keeping the tally-sheets at that poll, and J. E. Leonard, district attorney of that judicial district and a voter at that poll. Their evidence is so uniform as to the fairness and legality of the election held at this poll that we will merely quote their evidence on this point, and then leave that branch of the subject.

T. F. Montgomery, witness for contestee, who swears that he is a civil engineer and planter, testifies as follows (p. 33, record):

Q. Were you the Democratic commissioner of election at poll No. 2, in the parish of Carroll, on the 2d of November, 1874?--A. I was.

Q. Did you see any fraud or ill-practices in the conduct of the election at that poll?—A. I did not.

Q. Did you hear any charges of fraud or unfairness made?—A. Not during the election.

Q. If there had been any fraud or ill-practices, would you not have been likely to have noticed it?—A. I would. I watched the proceedings quite closely.

W. W. Benham, witness for contestee, swears as follows (pp. 50 and 52, record):

Q. Were you one of the commissioners of the election at poll No. 2?—A. I was.

Q. What was the character of the election held at poll No. 2, so far as peace, order, and fairness was concerned?—A. Everything was quiet the entire day. The Democratic commissioners expressed themselves as being perfectly satisfied with the fairness of the count and the election generally. Heard no complaints as to the fairness of the election from anybody.

M. A. Sweet, witness for contestee, swears (p. 44, record):

Q. Was the election at said poll fairly conducted?—A. It was.

Q. Did you hear any complaints made by any party on the day of the election at said poll?—A. I did not.

Q. Did general good feeling seem to prevail at the poll?—A. It did; everything seemed to be harmonious.

B. H. Lanier, witness for contestee, swears (p. 48, record):

Q. State what you know of the character of the election held on that day at that poll.—A. I was at and around the polls the entire day. The election was peaceable, quiet, and generally regarded as very fair. I remained at the polls until after the votes were counted, and assisted in keeping the tally-sheet.

W. B. Dickey, witness for contestee, swears (p. 54, record):

Q. How long were you at that poll on that day and immediately afterward?—A. Was there all day until the poll closed. At the closing of the poll I retired and returned to the poll between 12 and 1 o'clock that night, when they were still engaged in counting the votes, where I remained until the counting was completed.

Q. Was or not the election held at that poll peaceable, quiet, and fair?—A. It was, and was so generally admitted by all parties.

And, on cross-examination by contestant, he swears:

Q. Did you hear any complaints on the day of election at poll No. 2 of persons taking tickets out of the hands of colored voters and tearing them up and giving them others?—A. I heard of no complaints until after the polls were closed.

J. E. Leonard, witness for contestee, swears (p. 55, record):

Q. Did you vote at the election 2d of November last; and, if so, where, and about what hour of the day did you vote?—A. I voted at poll No. 2, parish of Carroll, late in the afternoon.

Q. Do you know of or did you hear of any complaints made on that day against the fairness of the election held at that poll?—A. I heard no complaints until a number of days after the election, when Nicholas Burton came to me to bring a suit for him, the record of which was offered by contestant.

It will be observed by an examination of this evidence, it being all that was adduced in reference to the fairness of the election, that it was peaceable, quiet, and fair. There is no attempt to prove fraud or mis-

conduct up to the closing of the poll, nor is there any attempt to prove fraud at this poll at all. We, therefore, are satisfied, from the testimony as to this poll, as well as in regard to the equities of the case, that this poll should be counted. Taking 65 votes, the vote received for Spencer, from 644 votes, the number received for Morey at this poll, we have 579, the majority for Morey at this poll, which, taken from Spencer's majority brought forward from poll No. 1, 456, will leave a majority for Morey of 123.

The general charge which is applied to polls 1 and 2 applies to

*Poll No.* 3.

In addition, contestant, in his notice, gives as a special reason why poll 3 should be rejected, that at this poll R. K. Anderson, the commissioner of election, did, while receiving polls, deface and obliterate names thereon with pen and ink, with the intention of changing the returns made, &c. It is not necessary to recapitulate the argument made in regard to poll No. 2. As the evidence in regard to the absence of the returns is the same as that in poll 2, therefore the argument with reference to poll 2 on that subject applies to this poll.

We now proceed to take the specific reason named in contestant's notice why this poll should be rejected. It will be seen from the evidence that there is not one word sustaining the special charge made against this poll of irregularities, fraud, or misconduct. Contestant seems to have abandoned the charge which he made against this poll. He does not introduce a single witness or produce any testimony in regard to it.

Contestee introduces the only witness who testifies in regard to poll No. 3. We give the evidence in regard to this poll.

The first witness is John Scott (p. 35, record), who swears:

JOHN SCOTT, being sworn, testifies as follows:

Question. Were you present at the election held at ward No. 3 on the 2d of November last?—Answer. I was.

Q. Was or not the election at that poll fairly conducted as far as you observed?—A. It was, all but two things, which I did not think was right, to wit: That the tickets of some of our men, the Gla men, were taken away from them and torn up by the Benham men; and Captain Anderson, one of the commissioners, opened the tickets and looked at them before putting them in the box, sometimes pushing them in the box with the ink end and sometimes with the other end of his pen.

Q. There were two factions, the Gla and the Benham factions, of the Republican party, were there not?—A. There were.

Q. Did not both of these factions support Morey for Congress?—A. I believe they did; most of them, anyhow.

Q. Do you know of any Republicans who supported Spencer for Congress?—A. I don't believe I do.

Q. Do you know of any Republicans who did not support Morey?—A. I do not.

Q. There was considerable bitterness between the two factions of the Republican party in Carroll Parish, was there not?—A. There was.

Q. Was Morey's name on the tickets of both factions?—A. It was.

The next, R. K. Anderson, commissioner of election at this poll (pp. 37 to 39), swears:

Question. State your name and place of residence.—Answer. My name is Robert K. Anderson. I reside in Carroll Parish.

Q. Were you at the election held on November 2, 1874, and what official position did you occupy?—A. I was at poll No. 3, ward No. 3, and was commissioner of election at said poll.

Q. State what you know of the manner in which the election was held and conducted at the poll for which you were commissioner.—A. The election was peaceable and fair. I knew of no charges of unfairness being made at the time. It was generally admitted by both Republicans and Democrats present at the polls that the election was free and fair. The ballots were counted at the poll under the direction of the three commissioners, namely, myself

and Dub Anderson, Republican commissioners, and Robert M. Bagley, Democratic commissioner, all three of whom signed the returns. The returns were then delivered to the supervisor of registration at Lake Providence, parish site.

Q. How many votes were cast at said poll, and what was the vote cast at said poll for W. B. Spencer, and how many for Frank Morey, candidates for Congress?

(This question is objected to by contestant on the grounds heretofore stated, and on the grounds that the returns are the only proper evidence of the matters inquired of.)

A. My recollection is that there were five hundred and fifty votes cast in all. There were seven votes cast for Spencer, two blank as to member of Congress, and the balance for Morey.

Cross-examined by contestant:

Q. When were the returns of said poll signed, where, and were they signed in duplicate or only one set made out?—A. They were signed and sworn to the next day after the election, not at the polls, but at Providence. They were sworn to before S. T. Austin, justice of the peace; said returns were not made in duplicate, but a single copy made.

Q. In stating the number and result of the votes at said poll, are you positive or do you only speak from memory?—A. I speak from memory only as regards the total number of votes cast. I am positive as to the two blank votes, and the number of votes by Spencer. Am positive that Morey got the balance. I am positive that there were more than five hundred votes cast.

## Robert M. Bagley (p. 48), Democratic commissioner at this poll (pp. 40 to 42, swears):

My name is Robert M. Bagley. I reside in the third ward, parish of Carroll; am a planter and merchant, and was appointed and served as Democratic commissioner of election for poll No. 3, parish of Carroll.

Q. Were you present all day during the election and afterward until the vote cast at said poll was counted?—A. I was.

Q. State how the election at that poll was conducted.—A. The election was conducted very loosely. I know that the law was not complied with in many instances. There were a great many charges of unfairness which I, as commissioner, attempted to correct, but was overruled. There was some disturbance on the day of the election between contending parties, especially among the constables, who were very partisan, all belonging to the same side. Candidates for office were allowed to keep the tally-sheets.

Q. Specify the instances in which the law was not complied with.—A. Parties were allowed to vote who I know were under age, and others who had not proper registration-certificates. The ballots were not counted nor returns made out until thirty-six hours after the closing of the polls. The official count upon which the returns were made was made in Providence thirty-six hours after the close of the election. The box was opened at the poll at the conclusion of the election and the names of persons voted for called off; but there was no official count kept of them at that time.

Q. Did you or not yourself keep an account of the votes that were cast at that poll as made out from the actual count of the votes cast?—A. I kept one of the tally-sheets; whether the count was correct or not I do not know. I tallied as the names were called from the ballots.

Q. Who called the names from the ballots?—A. R. K. Anderson, one of the Republican commissioners.

Q. Were or not the votes called off in the presence of other parties?—A. There were other parties in the room. Whether they saw the names on the tickets called I do not know.

Q. Did the tally-sheet that you kept agree with the return from that poll which you signed and swore to as being correct?

(Contestant objects to this question.)

A. The tally-sheet which I kept did correspond with the return which I signed and swore to.

Q. Did not the commissioners adopt the tally-sheet which you kept as the correct tally-sheet?

(Question objected to by contestant.)

A. They did, because the balance of the tally-sheets did not correspond.

Q. On the return which you swore to as being the correct statement of the votes cast at poll No. 3, how many votes were cast for William B. Spencer for Congress and Frank Morey for Congress?

(This question is objected on ground previously stated to other questions by contestant.)

A. I do not remember either now well enough to swear to them.

Q. Did you or not make affidavit, which affidavit was before the returning-board, in which you stated the exact number of votes cast for W. B. Spencer and for Frank Morey for Congress, and which affidavit stated that this was the vote stated in the returns which

you signed and swore to as being the correct statement of the votes cast for Morey and for Spencer, respectively, at poll No. 3?

(This question objected to by contestant.)

A. I know I made an affidavit before the returning-board, and think, though I am not positive, that I stated therein the vote for Morey and Spencer. My statement in that affidavit, whatever it was, was correct.

Q. If in that affidavit you swore that William B. Spencer received seven votes and Frank Morey five hundred and ten, was or not that the correct statement of the votes cast for those persons?

(Contestant objects to this question.)

A. It was.

Q. Do you know of any person at poll No. 3 who was prevented from voting by any disturbance which took place on the day of the election?—A. I do not.

Q. Do you know of any person at poll No. 3 who voted for Morey for Congress who did not do so of his own choice?—A. I do not.

Q. Was anybody arrested, or did you, as commissioner, arrest, ask to have arrested, or issue a warrant for the arrest of any person for violation of the election law at poll No. 3 on the day of election?—A. I did not.

Q. When you stated that the counting of the ballots was not commenced until thirty-six hours after the election, do you mean that the counting of the votes which you tallied, and which was adopted by the commissioners as the correct tally, was not commenced till thirty-six hours after the election?—A. What I mean by the official count having been made at Providence is this: At the conclusion of the tallying of the votes at the poll, and, I think, without having cast up the tallies, the ballot-box, with the tally-sheets, votes, &c., in it, sealed up, was taken to Providence by R. K. Anderson, and Nelson Blackwell, Republican deputy United States supervisor for said poll, to be delivered to the clerk of the court. I went to Providence on Wednesday, and, with the other commissioners, recounted the votes. Finding them to correspond with the tally-sheets, we made up the returns and signed them, and swore to their correctness.

Cross-examined:

Q. When you state that on getting to Providence you and the other commissioners recounted the votes, do you mean that you again called over and tallied each name on each ticket, or that you only counted the number of tickets in the box?—A. I mean that at Providence we only counted the number of tickets in the box, and did not tally them over again.

Q. Were you or not, after closing up the box and tallies and ballots at the polls, constantly with that box until your returns had been made and sworn to; and where was the box in the mean time?—A. I was not constantly with it. I saw the box in Providence on Tuesday evening in possession of the Republican deputy United States supervisor and Mr. Anderson. They took the box out of Providence that evening. I do not know of my own knowledge where they took it.

Q. Why were you not with that box all the time?—A. We, the commissioners, agreed to put the box in the hands of the said United States supervisor to bring to Providence. This arrangement was made for our mutual convenience.

Q. In making your tally-list, did you verify it by the votes themselves?—A. I did not.

Q. Did you see what purported to be your signature to returns and tally-sheets put before and canvassed by the State returning board; and, if so, were your signatures thereto genuine?—A. I did see said returns, and what purported to be my signature to the returns of poll No. 3 was a forgery.

Q. You have stated that you did not take any steps to arrest disturbers of order at said poll No. 3. Why did you not do so?—A. Because I was conversant with the election law, and did not know that I was authorized to do it.

Q. Did you see at said poll any undue influence or effort to prevent voters from voting as they wished; and, if so, what?—A. I did see undue influence used. I saw one man have nearly all of his clothes torn off of him by parties attempting to get him to vote as they wished. The man told me afterward that he would have voted differently, but was afraid.

Re-examined by contestee, Frank Morey:

Q. Was there any material difference between the tally-sheet kept by you and that kept by other parties; and, if so, what?—A. There was a considerable difference; I cannot state the exact amount.

Q. This man who told you he would have voted differently, did he tell you he would have voted differently as to member of Congress?—A. He did not.

## P. Jones Yorke (p. 48) swears:

P. JONES YORKE, sworn for contestee, Frank Morey, testifies:

Question. State your name, residence, and occupation, and where you were on the 2d of November last at the election.—Answer. P. Jones Yorke; third ward, Carroll Parish; planter; poll No. 3.

Q. State what you know of the manner in which the election at said poll was held and conducted.—A. Was at said poll nearly all day. The election was quiet and orderly, and the people voted promptly. It was as quiet and as fair an election as I ever saw. It was generally conceded that the election was free and fair by members of both parties. I remained all night and till the counting of the votes was finished next day, and until the tallies were made up and the ballot-box sealed.

Q. Do you recollect what vote was cast at that box for the candidates for Congress? If so, state what it was.

(Contestant objects to this question, as heretofore.)

A. I do not recollect the exact number, but there was between five and six hundred cast at that poll. They were nearly all cast for Morey, both factions of the Republican party voting for Morey. Spencer received only the votes of a part of the Democrats who voted at that box.

Cross-examined:

Q. Were you not a candidate on the ticket of one wing of the Republican party for the legislature?—A. I was.

From an examination of the testimony in regard to this poll, it will be observed that there is not a single irregularity proven. The election was fair, peaceable, and quiet. All the witnesses agree as to this point. The votes were counted without removing the boxes, the returns were made out, sealed up in the boxes, placed in the custody of R. K. Anderson and Nelson Blackwell, and taken to Providence, the parish-seat, where, the next day, Montgomery, the Democratic commissioner, testifies he went and proceeded to open the box, compared the ballots with the tallies kept, made the previous evening, found that they agreed, made up the returns, and swore to them. Montgomery also says that "We, the commissioners, agreed to put the box in the hands of the said United States supervisor to bring to Providence; that this arrangement was made for our mutual convenience." It will only be necessary to cite the case of Arnold *vs.* Lee (C. & H., 601), to establish the fact, Cook *vs.* Slought, that this irregularity would not of itself vitiate the election. In fact, from the foundation of the government to the present time the authorities all agree in this particular. In the case of Arnold *vs.* Lee, the evidence shows that the voting at the poll was done by placing the tickets in a gourd, that the election was closed, the ballots in the gourd tied up in a pocket-handkerchief, and in this condition given in the custody of the sheriff, who voted against contestant, took them to a store and placed them in a trunk in a room in the building.

The evidence further showed that the proprietor of the establishment where the ballots were received was not only a personal but a political enemy of the contestant, and had declared that he should not be elected. The House held in this case that, unless contestant could show that some fraud had been committed, which could change the result, the evidence was insufficient to throw out the poll. The authorities heretofore cited in regard to Concordia Parish and polls No. 1 and 2 of this parish, apply as to this poll. It is not deemed necessary to add anything to what has been already said on this subject. As to the vote cast, one of the commissioners, R. K. Anderson, testifies that there were 550 votes cast in all. There were 7 votes cast for Spencer, for member of Congress, and 2 blanks, the balance for Morey. This evidence stands unimpeached. Spencer cannot claim that he received more than 7 votes. He nowhere attempts to contradict the evidence of Anderson. But contestee does not depend upon his partisan friends, for this poll is sustained upon the evidence of the Democratic commissioner and the Democratic member of the returning-board of Louisiana, Mr. Arroyo, and Mr. Bagley, who, on his examination in this case, exhibited a degree of forgetfulness, to use no stronger term, that cer-

tainly was extraordinary. But, fortunately for contestee, Mr. Bagley, at a time when his memory was fresh, with the memorandum before him, made an affidavit which was presented to the returning-board at New Orleans. It is true that contestee has not furnished a copy of that affidavit. There is one affidavit of Bagley in the evidence, but that does not state the number of votes received by contestant and contestee. But he says that if he did make an affidavit giving the number of votes received by Spencer and Morey, the statement therein contained is correct. Mr. Zachariah (p. 16, record) says:

Mr. Bagley made a subsequent affidavit, in which he alleged that what purported to be the correct returns from that poll was a forgery, in two respects: first, the signature purporting to be his was not his signature; and secondly, that the true, original tally-sheet had been made out in red ink, whereas that shown the board was made out in black ink, showing conclusively that Mr. Bagley made two affidavits.

Mr. Arroyo (p. 13) says:

Q. The board did so recognize the returns as forgeries?—A. That is, there were affidavits read before the board of these three gentlemen. Spann, Montgomery, and Bagley, stating the actual number of votes cast in their respective polls, and if there was any other statement it was false, and their signatures to such statements forgeries.

On page 14:

Q. Mr. Arroyo, did you make an official protest to the action of the board in regard to the Carroll Parish contest?—A. I did, sir.

Q. Will you be kind enough to look at the Picayune of 19th December, 1874, and read what is published there in its columns as the protest of Mr. Arroyo, and let me know whether that is a copy of your protest?—A. Though it is not signed by me, it is evidently my protest, for I recognize all the points that I made in it. I have kept a copy of it. (After further inspection.) It is my protest, sir.

Q. The various affidavits referred to in that were before the board?—A. Yes, sir.

I quote that portion of the protest relating to this poll, as follows:

The undersigned, a member of the returning-board, protests against the decision of the board in canvassing and compiling the returns of the parish of Carroll, for the following reasons, to wit: Because, according to said report and tally-sheets made by the commissioners of election at the different polls of said parish, the following parties appear to have received the following vote, viz: At poll 3 for State treasurer, A. Dubuclet received 558 votes, J. C. Moncure 3; for Congress, F. Morey received 554 votes, and W B. Spencer 7; for senator, George C. Benham received 501, J. A. Gla 60, and J. H. Brigham 1; while R. M. Bagley, Democratic commissioner of election at said poll, swears that Antoine Dubuclet received 514 votes, J. C. Moncure 3 votes; Frank Morey, for Congress, received 510 votes, W. B. Spencer 7 votes, George C. Benham 350 votes, J. A. Gla 164, and J. H. Brigham 1 vote. Being present in the returning-board when the returns were canvassed, he, the said Bagley, pronounced the return false, his signature thereto a forgery, and the tally-sheets accompanying the same as spurious and false; for the tally-sheet that was kept by the commissioners and adopted by them was the one which he, the said Bagley, wrote, and that was in red ink, whereas the one before the returning-board is in black ink.

This shows that Mr. Bagley, the Democratic commissioner, a short time after the election, and before the returning-board of the State had declared the result, filed his affidavit, in which he states that Morey received 510 votes and Spencer 7 votes. So far as the vote relative to Spencer is concerned it will be observed that he confirms Anderson. Nor is this all. It will be observed that Mr. Arroyo, the Democratic member of the returning-board, makes proclamation, and agrees that Morey received 510 votes and Spencer 7 votes. Certainly, contestant is not justified in asking that this poll should be thrown out, when it is admitted by his own partisan friends upon the returning-board, after a full investigation of the case, that he, Spencer, received but 7 votes and Morey 510 votes. Contestant has introduced no evidence to contradict Bagley's or Anderson's statement, nor to disprove the announcement made by Mr. Arroyo, his partisan friend on the returning-board. There is no evidence to show whether the box at this poll was deposited in the

clerk's office or not, and applying the rule that an officer is presumed to have discharged his duty in the absence of proof to the contary, it follows that the box was so deposited. We are therefore satisfied that this poll should be counted. The total number of votes cast at this poll for member ot Congress was 517. Taking the said votes cast for Spencer, 7, from those cast for Morey, 510, we have a majority for Morey of 503 at this poll, which, added to Morey's majority of 123, with which he left poll 2, gives Morey a majority of 626.

We now pass to consider poll 4. There are no returns from this poll. The same argument applies to this poll as to poll 2. The first evidence inroduced in regard to this poll is the affidavit of T. D. McCandless (page 112, record), presented by contestee without objection (page 24.) We append all the evidence in regard to this poll. Contestant introduces no witnesses whatever. The evidence is as follows:

T. D. McCandless, who was deputy United States supervisor of elections at this poll, swears that the total number of votes cast for members of Congress at poll 4 was 230, of which Morey received 155, Spencer 75 votes.

EXHIBIT 33.—*Affidavit of T. D. McCandless.*

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before me, the undersigned, justice of the peace in and for the Fourth ward of said parish and State, duly commissioned and sworn, Thomas D. McCandless, a resident of said parish and State, who, after being duly sworn, deposed and said that, on the 2d day of November, A. D. 1874, he acted, under appointment from W. A. Blount, as deputy supervisor of election which was held on that day, at the town of Floyd, in said parish and State; that at an early hour in the morning of that day, the commissioners of election, to wit, James S. Milliken, Dr. John M. Gaddis, and George Pride, were sworn in as such by Walter T. C. Anderson, a *citizen* of the aforesaid ward, parish, and State; that the election was an excedingly quiet one; that at the usual hour the polls were closed; that after about fifteen minutes' recess said commissioners proceeded to count the vote in the same room where the election had been held, with the following results, to wit:

*State treasurer.*—Dubuclet, 155 votes; Moncure, 75 votes.

*Congress, fifth district.*—Morey, 155 votes; Spencer, 75 votes.

*State senate.*—Benham, 111 votes; Brigham, 60 votes; Gla, 56 votes.

That there was one (1) vote more, as shown per the tally-sheets, than the list of votes polled; that after the counting was declared at an end and completed, the box containing the votes was taken charge of by Milliken, commissioner, and conducted by him to the back room of a store in the town of Floyd (which he had formerly occupied as a sleeping-room), for safe-keeping, and in which room deponent saw said box the last time; learned next morning (November 3) that said Milliken, with others, had carried it to the town of Lake Providence; that he knows nothing, of his own knowledge, concerning the vote or election at other boxes or precincts than at the town of Floyd, but that he is in possession of the exact vote as polled at the town of Floyd for each and every office that was to have an officer elected on said 2d of November to fill, but deems it unnecessary to give the result further than he has in this affidavit.

T. D. McCANDLESS.

Sworn to and subscribed before me on this the 26th day of November, A. D. 1874.

MERRILL his + mark. JACKSON,
*Justice of the Peace.*

Attest:
W. A. HEDRICK.

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.
[SEAL.] P. G. DESLONDE,
*Secretary of State.*

John M. Gaddis, page 44, swears:

JOHN M. GADDIS, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, occupation; where and in what capacity were you during the election on the 2d of November, 1874?—Answer. John M. Gaddis; fourth ward,

Carroll Parish; physician and planter; and was commissioner of election at poll No. 4, parish of Carroll.

Q. State what was the character of the election held at that poll on that day, the number of votes cast at that poll, and the number received by each candidate for Congress.

(Contestant objects to this question.)

A. It was fair, quiet, and peaceable, and was so admitted at the close by everybody. There were two hundred and twenty-nine votes cast in all, of which number Frank Morey received one hundred and fifty-five, and William B. Spencer seventy-four, for member of Congress. At the close of the polls the votes were counted by myself and the other commissioners, the returns made up, and signed by J.S. Milliken and myself, and I am very certain by Mr. Pride, the other commissioner. Returns and poll-lists were then sent, with the ballot-box and ballots, by J. S. Milliken, the democratic commissioner, to Providence, to be delivered to the proper officer.

## James S. Millikin, page 36, for contestee, swears:

JAMES S. MILLIKIN, sworn for contestee, Frank Morey, testifies as follows:

Question. Please state your name and residence.—Answer. My name is James S. Millikin, and I reside in Floyd, in Carroll Parish.

Q. Where were you on the day of the election, the 2d day of November last?—A. I was at the fourth ward poll, and a Democratic commissioner at that poll.

Q. How was the election conducted at that poll?—A. The poll was opened at the regular hour, and was conducted fairly, I think. I heard no charge of unfairness.

Q. Did you sign the election-returns of that poll?—A. I cannot recollect whether I did or did not, but I think I did all that was required of us by the printed instructions furnished for our guidance.

Q. Have you ever at any time made an *ex-parte* affidavit concerning the votes cast at said poll at said election?—A. I have not; but Mr. McCandless told me he had, and that his statement was in accordance with the tally-sheets.

Q. Was Mr. McCandless a commissioner at that poll?—A. He was not a commissioner of election, but claimed to act under some authority; I don't know what.

## William H. Stroube, page 47, a member of the police jury, swears:

WILLIAM H. STROUBE, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the day of election, 2d November, 1874.—Answer. William H. Stroube; Floyd, fourth ward; clerk, and member of police jury, and notary public. Was in the town of Floyd, poll No. 4, Carroll Parish.

Q. State what you know of the character of the election held at that poll on that day.—A. I was at the polls when they were opened; was there most of the day, and was there when they closed. So far as I know, the election at that poll was free, fair, and peaceable. Heard no complaints at all, either then or since. I was present most of the time while the vote was being counted. I heard the result of the poll, but cannot remember now the figures.

Q. Do you recollect what the vote was at that poll for Spencer and for Morey for Congress? And if so, state it.

(Contestant objects to this question on grounds heretofore stated.)

A. To the best of my recollection, the vote, as announced by the commissioners, was for Morey one hundred and fifty-five, and for Spencer seventy-four.

Col. HIRAM R. LOTT, sworn for Frank Morey, contestee, testifies as follows:

Question. What is your name, residence, and occupation, and where were you at the el[illegible]ec-tion on the 2d day of November, 1874?—Answer. Hiram R. Lott; ward No. 4, Carroll P[illegible]ar-ish; planter; at Floyd, poll No. 4.

Q. State what you know in regard to the fairness of the election held at that poll on t[illegible]h[illegible] day.—A. I was there most of the day, but not at the opening or closing of the polls. [illegible]T[illegible] election was a peaceable and quiet one, every one voting that wanted to, so far as I kn[illegible]ov[illegible] It was generally observed that the election was an unusually quiet one.

Contestant does not attempt to disprove these statements by introd[illegible]u[illegible]ing any evidence to impeach either Gaddis, Stroube, or McCandle[illegible]s. All the evidence shows that it was a fair and free election. There [illegible] no evidence to raise even a presumption that these commissioners fai[illegible]ed to comply with the law in every particular; but, on the contrary, [illegible] establishes the fact positively that they did comply with the law in ev[illegible]ry particular. The committee agree that this poll should be counted, whi[illegible]ch

gives Spencer 75 votes, and Morey 155 votes. Taking Spencer's vote, 75, from Morey's, 155, we have 80 majority for Morey, which, added to 626, which he had when he left poll 3, gives Morey 706.

We now pass to poll 5. All the evidence as to this poll is introduced by contestee. As to the returns, they are in the same condition as those of polls 1, 2, 3, and 4. The same argument applies, the same authorities are cited. There were 204 votes cast at this poll, of which Spencer received 108, and Morey received 96. Taking 96 from 108, it leaves Spencer 12 majority, which, taken from Morey's majority of 706, with which he left poll 4, elects Morey by a majority of 694 votes.

We give all the evidence in regard to this poll, as follows:

EXHIBIT 34.—*Affidavit of Richard Dickerson.*

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before the undersigned authority Richard Dickerson, who, being duly sworn, says that he acted as United States deputy supervisor at precinct No. 5, at Oak Grove, said parish and State, on the day of the election, Monday, 2d day of November, 1874; that he saw the ballots counted, and the tally-sheets, after being made up, showed that—

*For State treasurer.*—John C. Moncure received 106 votes; Antoine Dubuclet received 91 votes.

*For Congress.*—Wm. B. Spencer received 108 votes; Frank Morey received 96 votes.

*For State senator.*—Jaques A. Gla received 129 votes; J. Henry Brigham received 33 votes; Geo. C. Benham received 41 votes.

*For representatives.*—J. Ed. Burton received 133 votes; Henry Atkins received 127 votes; P. Jones York received 65 votes; Cain Sartain received 36 votes.

That the above was a true and correct count of the vote cast for said candidates, as made out and signed by the commissioners, and I signed the same with them; and if the tally-sheets returned to the returning-board show a different count, the same has been tampered with and changed since delivered by the commissioners to the supervisor.

RICHARD DICKERSON.

Sworn to and subscribed before me this 23d day of November, A. D. 1874.

E. F. NEWMAN,
*Mayor and ex-officio Justice of the Peace.*

OFFICE SECRETARY STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.
[SEAL.]

N. DURAND,
*Assistant Secretary of State.*

RECAPITULATION BY MAJORITIES.

| | | | |
|---|---|---|---|
| Majority for Spencer in | Caldwell Parish | | 139 |
| | Catahoula " | | 96 |
| | Claiborne " | | 712 |
| | Franklin " | | 405 |
| | Jackson " | | 440 |
| | Lincoln " | | 389 |
| | Richland " | | 293 |
| | Union " | | 716 |
| | Tensas " | | 754 |
| | | | 3,944 |
| | Carroll " | (poll 5) | 12 |
| | | | 3,956 |
| Morey's majority in | Madison Parish | | 570 |
| | Morehouse " | | 337 |
| | Wachita " | | 943 |
| | Concordia " | | 1,112 |
| | Carroll " | (exclusive of poll 5) | 1,698 |
| | | | 4,650 |
| Morey's total majority | | 4,650 | |
| Spencer's total majority | | 3,956 | |
| Morey's majority | | | 694 |

In conclusion, we have but to say that we have examined the evidence carefully, and have applied the rules established by the House and the courts in their adjudication of contested elections to the facts in this case, and are satisfied that not only the facts, under the rule of law, will confirm the conclusion to which we have arrived, but that the equities of the case are such as will warrant the rejection of Mr. Spencer's claim to a seat in this House. The evidence, taken together with the manner of conducting the investigation, is conclusive that Mr. Spencer did not believe that the vote of the fifth poll of Concordia Parish or the vote of Carroll Parish was cast for him; but, owing to the misconduct of some one wholly unknown to the committee, from the evidence in the case, the ballot-boxes and the returns had been stolen from the clerk's office, and Mr. Spencer, ascertaining this fact, seized it as a pretext to unseat Mr. Morey and seat himself. If the House, after having considered all the evidence in this case, are willing to adopt the rule that a minority candidate can by some frivolous pretext obtain a seat to which he is not entitled or elected by rejecting the suffrages of electors after the election had been fairly held, the votes counted, and the returns made, because these votes and returns have been abstracted, they will place it in the power of all malicious and evil-disposed persons to destroy the evidences of an election, and by that means defeat the will of the majority. Nowhere has Mr. Spencer introduced an iota of evidence tending to establish the fact that on account of the irregularities mentioned in the evidence was he deprived of a single vote, nor does he in his notice contend that on account of these irregularities mentioned in his notice he would have received a greater vote in the fifth precinct of Concordia Parish or in Carroll Parish; but the entire evidence establishes the fact that of the actual votes cast (and it is admitted by contestant) Morey received a majority. It is further conceded by contestant that, if the actual vote polled in the fifth precinct of Concordia Parish and in Carroll Parish is counted, Morey unquestionably is elected. Therefore, admitting that he (Spencer) is the minority candidate, we contend that if the committee should arrive at the conclusion that the fifth precinct of Concordia Parish and the whole of Carroll Parish are to be rejected under the rule governing contested elections, established by this House, the seat cannot be awarded to Mr. Spencer, but the election will have to be remanded again to the people, and both Morey's and Spencer's claims are to be rejected.

*Resolved*, That William B. Spencer was not elected and is not entitled to a seat in this House.

*Resolved*, That Hon. Frank Morey was elected and is entitled to a seat in this House.

G. WILEY WELLS.
MARTIN I. TOWNSEND.
JOHN H. BAKER.
WILLIAM R. BROWN.

The undersigned begs leave to submit the following as his views:

I agree with the minority of the committee in holding that the vote in the fifth precinct of Concordia Parish should be counted. The irregularities complained of by the contestant, in relation to the canvass of the ballots in this precinct, did not result from any fraudulent purpose on the part of the election-board, and no wrong was done to the substantial rights of the parties or people.

I am not entirely satisfied with the views of the majority or minority

in relation to the vote in the Carroll Parish. I am of the opinion that an election was held in said parish at the time and in manner required by law; that the legal voters thereof actually attended the several polls, and in good faith cast their ballots, and that the votes which were thus cast were lawfully cast; and if the officers to whom the returns of the election in said parish were sent had done their duty and preserved the evidences of said election, the sitting member would be shown to have been elected by a large majority over the contestant. After the election was complete, and the returns had been made to the parish-site, all the evidences of the election were either falsified or destroyed by some unknown party. I am not satisfied that the legal voters of this parish ought to be disfranchised by the loss or destruction of the ballots and records of election held therein; but if the votes thus lawfully cast in Carroll Parish ought to be rejected, as claimed by the majority, on the ground of the loss or destruction of the ballots and returns of the election after the close of the polls, surely the contestant, who is confessedly the minority candidate, ought not to take advantage of the wrong done to the honest legal voters of the parish, and thus obtain a seat in this House. I am inclined to think that the votes cast in this parish ought to be counted as claimed by the minority report, but I am not fully persuaded of it. However, as between the contestant and contestee, I think the contestee shows the better, although by no means a clear, title to the seat. On the whole, if the sitting member is to be ousted, I think justice and a proper regard to the rights of the people would require the seat to be declared vacant and a new election ordered.

JNO. H. BAKER.

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## APPENDIX.

### EVIDENCE IN THE CASE OF W. B. SPENCER vs. FRANK MOREY FIFTH CONGRESSIONAL DISTRICT OF LOUISIANA.

NOTE.—The figures cut into the margin are the folios of the original print of the evidence in this case (H. Mis. 54, 1st Sess. 44th Cong.), and references to pages in the report are to these folios.

NEW ORLEANS, *January* 6, 1875.

Hon. FRANK MOREY, *present:*

DEAR SIR: As I contest your seat in the Forty-fourth Congress as Representative of the fifth district of Louisiana, and as you will be absent from this State during the next thirty days, I request that you designate an agent or an attorney upon whom I may serve the formal notice of contest required by law, and who may also represent you in taking depositions and other evidence in the case.

Respectfully and truly, your obedient servant,

WM. B. SPENCER.

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NEW ORLEANS, *January* 6, 1875.

In compliance with the above request, I do hereby appoint and constitute John Ray and J. Ennemoser, or either of them, my agents, for me, and in my behalf and name, to receive and accept or acknowledge service of notice of contest by W. B. Spencer of my right to a seat in the Forty-fourth Congress as Representative of the fifth district of Louisiana; and I do hereby declare and agree that service of said notice on either one of my said agents, or its acceptance or acknowledgment by either of them, shall and will be as binding on me as though served on me personally.

FRANK MOREY.

*Notice.*

VIDALIA, LA., *January* 12, 1875.

Hon. FRANK MOREY:

DEAR SIR: You are hereby notified that I will and do contest your right to a seat in the Forty-fourth Congress as a Representative from the fifth Congressional district of
2 Louisiana. I claim to have been duly and legally elected as the Representative from said district at the election held in this State on Monday, the 2d day of November, 1874.

This contest I base on the following grounds, to wit:

1. I claim to have received the following majorities over you in the following parishes, as shown by the official returns in said election, to wit:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| In Caldwell | you | received | 401 | and I | 540 | votes; | my | majority | 139 |
| In Catahoula | " | " | 742 | " " | 838 | " | " | " | 96 |
| In Claiborne | " | " | 663 | " " | 1,375 | " | " | " | 712 |
| In Franklin | " | " | 80 | " " | 485 | " | " | " | 405 |
| In Jackson | " | " | 94 | " " | 534 | " | " | " | 440 |
| In Lincoln | " | " | 543 | " " | 934 | " | " | " | 391 |
| In Richland | " | " | 441 | " " | 734 | " | " | " | 293 |
| In Tensas | " | " | 1,097 | " " | 1,851 | " | " | " | 754 |
| In Union | " | " | 439 | " " | 1,155 | " | " | " | 716 |
| Making my total majorities | | | | | | | | | 3,946 |

While your majorities, as per official returns, over me were, in the following parishes, as follows:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| In Madison | I | received | 759 | and you | 1,319 | votes; | your | majority | 560 |
| In Morehouse | " | " | 668 | " " | 1,005 | " | " | " | 337 |
| In Ouachita | " | " | 759 | " " | 1,702 | " | " | " | 943 |
| In Concordia | " | " | 489 | " " | 1,601 | " | " | " | 1,112 |
| Making your majorities as returned, total | | | | | | | | | 2,952 |
| From this total should be deducted | | | | | | | | | 450 |
| Leaving your total majorities | | | | | | | | | 2,502 |

The above deduction of 450 is made on account of the fifth ward or poll of Concordia Parish having been illegally returned and counted, for reasons hereinafter stated.

II. I claim and charge that the State returning-board wrongfully and illegally canvassed and counted pretended and forged returns from Carroll Parish, whereby you were given a majority over me in said parish of 1,920 votes. I oppose the counting of any votes in Carroll Parish, for the following reasons:

1st. Because there was no legal or valid election held in said parish on 2d November, 1874. The illegalities, frauds, and wrongs committed and practiced by your partisans and friends were of such gravity and number as to render the said election null and void, as not indicating the will and choice of the people thereof.

The supervisor of registration and election in said parish was the mere tool of George C. Benham and others of your supporters, the said Benham being himself a Republican candidate for State senator in the district of which Carroll is part. The said Benham, in his and your interest, governed, ruled, and controlled the police-jury of said parish, and through it procured the appointment of his and your friends, exclusively, as commissioners of election at the various polling-places, in violation of the election-laws, which required that the commissioners at each poll should be of different political parties.

At ward or poll No. 1 in said parish the said commissioners, in violation of the law
3 which secures to each voter the right to deposit with his own hand his ballot in the ballot-box, placed the ballot-box at said poll in a high or second-story window, and in a room to which the public were not admitted, said window being so far above the ground as to render it impossible for the voters to reach it and deposit their ballots; and all the voters at said poll were compelled to place the ballots on the ends of long sticks or canes, and thus hand them up to said ballot-box, where they were received and taken by others, the said voters being unable to see or know what became of their said ballots. Many of the ballots so handed up were torn up or changed, or not deposited in the ballot-box, and numbers of ballots were handed up by one individual in this way.

At ward or poll No. 2 in said parish, on said 2d November, 1874, the said George C. Benham and others of your partisans did, by unlawful and violent conduct and threats, intimidate the colored voters of said parish, and snatched their ballots from their hands as they approached the polls to vote, and forced them to take and vote other ballots than those they had and were going to vote, thereby wrongfully and fraudulently procuring, by force and intimidation, votes in his and your interest; which violent conduct was persisted in throughout said day at said poll, in violation of the freedom of election secured by law.

*At ward* or poll No. 3 in said parish, R. K. Anderson, a commissioner of election and partisan of yours and Benham's, did, while receiving ballots, deface and obliterate names of can-

didates thereon with pen and ink, with intent and purpose of changing the results of said election in the interest of said party. No legal count or return of the votes at said poll was made, but the said Anderson took and carried away from the voting-place the ballot-box, with the ballots, lists, &c., and refused to count the same, said box having been carried off to Anderson's private residence, and from that day kept concealed or destroyed.

At these three polls or wards at least five-sixths of the votes of the parish were cast. At all of them the frauds, wrongs, and illegalities were so flagrant and outrageous as to destroy all certainty, and to render the result no evidence of the popular will. At each and all of said polls more ballots were put in the boxes than there were voters. The commissioners who held said election were not appointed and sworn as the law directs, nor at any of said polls were the votes lawfully counted, nor returns made and sworn to as the law directs. On the contrary, your partisans at once seized upon all the ballot-boxes, with the ballots, lists of voters, and other papers, concealed and still conceal them, in order to facilitate their unlawful and wrongful purpose of manipulating, changing, and falsifying the same.

The law requires that the registrar or supervisor of election shall forthwith, after the election, deposit in the office of the clerk of the district court of the parish the ballot-boxes, with the ballots, lists of voters, tally-sheets, and other evidences of the election. The registrar or supervisor of said parish, being a mere tool and dependent of said Benham and your other friends, conspired with them to change the results of said election, and, instead of making said deposit as required by law, carried said boxes, ballots, lists, &c., away from the parish to New Orleans, and never has deposited them as required by law, and although judicial process has been resorted to to obtain said boxes, ballots, &c., they cannot be found. In pursuance of said conspiracy, the said supervisor deliberately and fraudulently suppressed, concealed, or destroyed the said ballot-boxes, ballots, &c., and made up and concocted false and fraudulent returns of said election, and forged or caused to be forged thereto the signatures of the election commissioners, and returned about 500 more votes than were cast in said parish, so falsifying said returns as to destroy all evidence of the real results of
4 said election on 2d November, 1874.

So flagrant and wrongful were the proceedings and conduct of said election, that the thirteenth district court, at the December term, 1874, thereof, in the suit of Nicholas Burton *et al. vs.* Hicks *et al.*, declared, decreed, and adjudged the election aforesaid, held in said parish on 2d November, 1874, to be null and void, and ordered a new election.

2. Because there were no returns or legal evidence in existence or before said election-board of an election in Carroll Parish on the 2d day of November, 1874; and the said returning-board wrongfully and fraudulently, and with intent to defeat my election, counted and canvassed as returns of election in said parish what was in fact, and what it by its own public acts and statements declared to be, forgeries, and not returns. Said pretended returns, being forgeries, and false and fraudulent, and so proven, as admitted by said returning-board, did not constitute any evidence of said election, and should have been excluded, therefore, in estimating the results. But the said board, actuated by partisan purposes, and against the solemn protest of one of its members, gave full effect to said forgeries as between you and me, but disregarded them as between said Benham and J. A. Gla, his opponent, who were both Republicans.

III. I claim and charge that in the parish of Lincoln, as shown by the official returns of said election, I received 934 votes and you received 543 votes, thus giving me a majority of 391 over you; that the said returning-board, without right and without any sufficient proof, rejected 344 of my said votes, by refusing, as appears, to count the votes cast at poll 2, second ward, and polls or wards 3 and 6; by which proceeding said board wrongfully and unlawfully reduced my majority in said parish from 391 to 76 votes.

IV. I claim that the said returning-board unlawfully canvassed and counted the returns from the fifth poll or ward of Concordia Parish, and that the supervisor unlawfully returned the votes of said poll, thereby giving you wrongfully a majority of 450 more in said parish than you were legally entitled to, for the following reasons, to wit: The election-laws of Louisiana require that the ballot-boxes shall be opened at the polling-place as soon as the voting is over, in presence of the public, and the votes counted publicly, and returns made within twenty-four hours after the closing of the polls. At said fifth poll the commissioners of election refused to open and count the votes at the polling, but, on the contrary, they took the ballot box late at night, and carried it away to Vidalia, a distance of fifteen miles, and went into a private apartment and counted the votes out of the presence of the public, and made no returns thereof for two days after the election; all of which constitutes presumptive evidence of fraud and wrong.

WM. B. SPENCER.

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[Telegram.]

NATCHEZ, MISS., *February* 4, 1875.

To Hon. FRANK MOREY:

Julius Aroni is my agent to receive service of your answer.

W. B. SPENCER.

5 *Answer.*

HOUSE OF REPRESENTATIVES,
*Washington, D. C., February* 8, 1875.

WILLIAM B. SPENCER, Esq.:

SIR: The undersigned hereby acknowledges your notice of contest to his right to a seat in the Forty-fourth Congress, as a Representative of the fifth Congressional district of Louisiana, which notice is dated Vidalia, La., January 12, 1875, and which, in accordance with our agreement, is to take effect as though served on me January 20, 1875, and, for answer, denies each and severally the claims set forth by you, except so much of your statement of the vote cast for you and for me in the several parishes named by you as is in accordance with the statement of the results of the election, as ascertained and determined by the returning-officers of said election. And, further, I deny all and severally the truth of every allegation made in your notice that in anywise tends to impeach the regularity, legality, and fairness of either the registration or election in the case in contest, or that in anywise tends to invalidate the correctness of the promulgated returns of votes cast for Congressman in the fifth Congressional district of Louisiana on the 2d day of November, 1874, and demand proof of your said allegations.

I. I claim that you have not the requisite constitutional qualifications for a contestant for my seat in the Forty-fourth Congress.

II. I claim that you are not a resident of the State of Louisiana, but that you are and have been for several years continuously a resident of Natchez, Miss.

* * * * * * *

V. I claim that I received the number of votes and the majority of votes which, by the returns of the commissioners of election of poll 5, parish of Concordia, and by the returns of the board of returning-officers of the election, I am credited with having received.

VI. I claim that I received the majority of votes credited to me in the parish of Carroll by the board of returning-officers, and that the election in said parish was conducted in accordance with law.

And, further, I claim that whatever may have been *informal* and *irregular* in the instances specified in your notice relative to the matter of registration and the conduct of the election held November 2, 1874, in the district aforesaid, such informalities or irregularities were not in my interest, but adverse, and they were not of a character to vitiate the election, nor to prevent a fair election, nor did they materially and injuriously affect the number of votes received by contestant, nor lead to a larger count of votes for me than I received and was entitled to be credited with; and all of which facts I allege are susceptible of proof.

FRANK MOREY.

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NEW ORLEANS, *February* 18, 1875.

The answer of Hon. Frank Morey to the notice of W. B. Spencer of the contest of the right to a seat in the Forty-fourth Congress as a Representative of the fifth Congressional district of Louisiana, which answer is dated Washington, D. C., February 8, 1875, has this day been served on me as agent of W. B. Spencer.

JULIUS ARONI.

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6 VIDALIA, LA., *February* 21, 1875.

HON. FRANK MOREY, *Washington, D. C.:*

DEAR SIR: Your telegram of the 3d instant was duly received and answered on the 4th by me, designating Julius Aroni as my agent to receive service of your answer to my notice of contest. Your answer was served on Mr. Aroni on the 18th instant, and duly forwarded to me and is in my hands.

I inclose you the duplicate desired.

I shall take pleasure in awaiting your leisure in the matter of taking testimony in our contest, as suggested by you in your favor of 11th instant. My inclination is to conduct the case so as to inconvenience each other as little as possible. I will, therefore, take no steps in the matter until your return, which I understand will be about the 8th or 10th of March, about which time I will perhaps give notice to Mr. Kay as you suggest.

My understanding of the law is that I have the first forty days, then you forty, and in conclusion I ten more.

Could we not get together and so arrange this matter by agreement as to serve our respective conveniences? It would be more pleasant and agreeable to do so. For instance, we might agree that from such a date to such a date I would take testimony in Carroll and you likewise; or, perhaps, to save two trips, we might take testimony for both at one time. I make these suggestions in the hope that our *contest* may be conducted as agreeably as our canvass was.

I will be pleased to have your ideas in reply by telegram or letter at once.

*Respectfully* and truly,

WM. B. SPENCER.

HOUSE OF REPRESENTATIVES,
*Washington, D. C., March* 5, 1875.

Capt. WM. B. SPENCER, *Natchez, Miss.:*

DEAR SIR: Yours of the 25th instant is at hand to-day. Your understanding of the law is correct as to the time allowed to each party.

An explanatory act passed within a few days defines the ninety days to be "ninety days from the service of reply of contestee." That has been the general interpretation heretofore, but this makes it definite.

I am disposed to be as accommodating in this matter as you are, and will try and agree with you in any arrangement for our mutual convenience.

If you will, on receipt of this, write me at box 1856, New Orleans, and let me know when and where you wish to commence, what time would suit you best to be in Carroll and any other parishes in which you intend taking testimony, I will let you know how near I can conform my movements and business to it, and suggest such modifications of your programme as may appear to me to be necessary.

I presume you will prefer to commence in Concordia; if so, let me know when you wish to commence.

If the 18th or 20th instant will suit you better than earlier, it will suit me quite as well.

Yours, truly,

FRANK MOREY.

7 The notice of contest by Wm. B. Spencer of my right to seat in Forty-fourth Congress, hereinabove printed, was duly served on me through my agent, John Ray, on 20th January, 1875, as per agreement made by said Spencer and myself.

FRANK MOREY.

The above statement is correct.

WM. B. SPENCER.

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*Agreement to take evidence in the case of Wm. B. Spencer vs. Frank Morey, fifth Congressional district of Louisiana.*

In the matter of the contest of Wm. B. Spencer *vs.* F. Morey, for seat in the Forty-fourth Congress as Representative of fifth district of Louisiana, the following agreement has been made by the parties, in order to save time and labor in taking testimony in said cause and to avoid as much inconvenience as possible:

1st. We will take such testimony as may be desired for contestant and contestee in Concordia Parish, between the 20th March, 1875, and 3d April, 1875, at Vidalia, at such time between said dates as said Morey or his representative may be present.

2d. We will commence at Providence, Carroll Parish, to take testimony for both parties on the 26th April, 1875, and continue, if need be, till the 7th May, 1875.

3d. We will commence to take such testimony as may be offered by either party at Vienna, Lincoln Parish, on the 12th day of May, 1875 (or such earlier day as may be hereafter agreed upon by the parties), and continue till completed.

4th. As we have fixed the times and places for taking testimony in the parishes of Concordia, Carroll, and Lincoln, we waive and dispense with any further notice thereof, and we dispense with notice of the names of witnesses to be examined therein, each party having the right to summon and examine such witnesses as he may desire, it being distinctly understood and agreed that no testimony is to be taken before both parties are present in person or by attorney; provided the delay shall not exceed three days in either case.

5th. When we meet at said places and times herein fixed, the testimony will be taken in the following order: Spencer will first examine his witnesses; then Morey will examine his, and Spencer may then examine witnesses in rebuttal.

6th. Such testimony, if any, as either party may desire to take outside of the three parishes named will be taken after notices of time, place, and names of witnesses are given to the other party, and so as to not interfere with the proceedings hereinabove fixed; said testimony not to be taken after 21st May, 1875, without further consent of parties.

7th. Said testimony may be taken and certified by and before any judge or justice of the peace of the State of Louisiana for the parishes wherein said testimony may be taken; and the certificate of said judge or magistrate of his own capacity as such shall be sufficient authentication.

This 15th March, 1875.

WM. B. SPENCER.
FRANK MOREY.

8 [Duplicate.]

*Supplemental agreement.*

WM. B. SPENCER
*vs.*
FRANK MOREY.

The sixth clause of our agreement to take testimony of date 15th March, 1875, is hereby abrogated, and in lieu thereof we agree that we will take such testimony in New Orleans as either party may desire to offer, in the order and manner provided in the fifth and seventh clauses of our said agreement, said evidence in New Orleans to be taken between the 13th and 21st of April, 1875, and we waive notices of time and places and names of witnesses to be examined in New Orleans; no testimony to be taken, however, without both parties being present by themselves or counsel.

The second and third clauses of our said agreement are modified that we will continue to take testimony in Carroll with both parties and through, and that within five days after closing in Carroll we will commence in Lincoln to take testimony, and continue till completed.

After finishing in Lincoln, no testimony to be taken except by consent of parties or by order of the House of Representatives.

W. B. SPENCER.
FRANK MOREY.

APRIL 13, 1875.

W. B. SPENCER
*vs.*
FRANK MOREY.

APRIL 13, 1875.

In taking testimony in New Orleans we agreed that the questions propounded need be written down only when either party requires it; the intent hereof being to waive any informality as to the manner of taking said testimony.

W. B. SPENCER.
FRANK MOREY.

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## TESTIMONY TAKEN IN NEW ORLEANS.

12 *Testimony of Oscar Arroyo.*

W. B. SPENCER
*vs.*
FRANK MOREY.

Before me, E. North Cullom, the judge of the fifth district court of the State of Louisiana in and for the parish of Orleans, personally appeared Oscar Arroyo, a witness called on behalf of the contestant, W. B. Spencer, who, being by me duly sworn, makes the deposition which is hereto attached, and which was reduced to writing in the words and figures as follows, at the city of New Orleans, in the State of Louisiana, on this the 17th day of April, A. D. 1875.

OSCAR ARROYO sworn for the contestant.

Question. Mr. Arroyo, were you a member of the returning-board?—Answer. Yes, sir; I was.

13 Q. Were you present at the time that board was canvassing the returns of Carroll Parish?—A. I compiled them with General Anderson, another member of the board.

Q. I will ask you if the returning-board did not as a fact recognize that the return from the first, second, and third wards were forgeries—that the signatures were forgeries?—A. I detected the forgery myself, because I knew the signature of Mr. Spann. I knew his signature, and I detected the forgery. For the second ward I think Mr. Montgomery was commissioner. I knew his signature, and I detected it to be a forgery. For the third ward, when I opened the returns and tally-sheet a gentleman was present who leaned over me and said, "This signature to the returns and tally-sheet is a forgery." He said his name was Bagley; besides, he said that the tally-sheet which accompanied the returns was written by him in red ink, whereas the tally-sheet which was before the board was written in black ink. In the fourth and fifth there were discrepancies between the official returns and the statement under oath of the commissioners.

Q. Well, now, Mr. Arroyo, I will ask you whether or not in making the canvass of that parish, if the returning-board did not recognize it as a fact that the returns of the first, second, and third wards were forgeries? Here in this address by Mr. Wells, president of the *board*, in the Republican of the 25th of December, 1874, he says that the returns from the

parish were shown to have been changed in the cases of Carroll, Saint Helena, and Saint James, where it was charged and proved that they had been changed after they came into the hands of the supervisors—they admit that it was proved that these returns were changed; for instance, Spann, Montgomery, and Bagley proved that they were forgeries of the official returns?—A. Yes, sir.

Q. The board did so recognize these returns as forgeries?—A. That is, there were affidavits read before the board by these three gentlemen stating the actual number of votes cast in their respective polls, and if there was any other statement it was false, and their signatures to such statement forgeries.

Q. Mr. Arroyo, by what process did the majority of that board undertake to count the whole of these returns against Mr. Spencer for Congress and Moncure for treasurer when the returns were proven to be false and forged? Can you explain the process by which the majority of that board arrived at their right to count them?—A. Well, sir, they gave no reason. When I saw it was the determination to count the vote of that parish upon forged returns I then filed a protest, which ought to be a part of the minutes of that board, but which was never entered. In all of its decisions the board gave no reasons at all.

Q. Was it not a fact that the board while counting all these forged returns against Spencer and Moncure disregarded them as between Gla and Benham and other Republican candidates?—A. So far as that is concerned, Governor Wells, president of the board, relied entirely upon Mr. Blount's statement in relation to the senatorial vote, because that statement referred only to the senatorial election.

Q. Did not the returning-board in the case of De Soto Parish refuse to count duplicate original returns from the clerk's office in that parish?

(Objected to by Mr. Morey as irrelevant, De Soto not being in the fifth Congressional district.)

A. The duplicate original returns of the parish of De Soto were handed by me to the clerk of the court of that parish. They were opened, together with the taily-sheets, and spread on the table. The president of the board would not recognize them as returns, alleg-
14 ing for a reason that they did not come through the proper channel, to wit, the assistant supervisor of registration for that parish.

Q. These duplicate returns which you offered were they those given to you by the clerk of the court?—A. They were given to me by Mr. Reynolds, clerk of the district court for the parish of De Soto, who was present before the board.

Q. How did the board reconcile their action in refusing to count duplicate original returns in De Soto, after counting forged returns in Carroll?

(Objected to by Mr. Morey on the ground that the returning-board is not a party to the contest.)

A. The decisions of the board were generally given by Governor Wells, its president, without any reason.

Cross-examination by Mr. MOREY:

Q. Mr. Arroyo, did you make an official protest to the action of the board in regard to the Carroll Parish contest?—A. I did, sir.

Q. Will you be kind enough to look at the Picayune of the 19th December, 1874, and read what is published there in its columns as the protest of Mr. Arroyo; will you be kind enough to look at that and let me know whether that is a copy of your protest?—A. Though it is not signed by me, it is evidently my protest, for I recognize all the points that I made in that. I have kept a copy of it. (After further inspection.) It is my protest, sir.

Q. The various affidavits referred to in that were before the board?—A. Yes, sir; I took the data from them. The Picayune, hereto annexed and marked Exhibit J, contains a copy of my protest. (See appendix.)

Q. Mr. Arroyo, did not Governor Wells, on behalf of the other members of the board, submit a reply to your protest?—A. Yes, sir.

Q. Will you be kind enough to look at that extract of the Republican of December 20, 1874, and let me know whether that is a copy of the reply of Governor Wells to your protest?—A. Yes, sir; it is. (Reply of Governor Wells to Mr. Arroyo's protest, and affidavit of W. A. Blount, hereto annexed and marked Exhibit K. See appendix.)

Q. You have stated the board gave no reasons why they did not change the vote so far as the other candidates besides Gla and Benham were concerned; did they not give their reasons in their answer to your protest?—A. At the time the board decided the Carroll Parish case there were no reasons given. My protest was handed in the next day, and subsequently, a few days afterward, Governor Wells made this answer to my protest, in which he gave his reasons for deciding that way; but he mainly relied on Mr. Blount's testimony, saying that he was a sworn officer.

Q. Mr. Arroyo, was there any evidence before your board that the returns from poll 5 had been changed?—A. Let me refer back to my protest, if you please. There was only a change so far as the senatorial election was concerned.

Q. At poll 2 was there any evidence before the board that the returns had been altered, as far as the vote between Mr. Spencer and myself was concerned?—A. There was no evidence of change of the vote, except so far as senator was concerned.

Q. Do you recollect, Mr. Arroyo, how much Mr. Spencer's vote was increased, and how much mine was decreased, by the statement of the votes cast, as made in the affidavits of Mr. Spann, Mr. Bagley, Mr. Millican, and Mr. McCandless?—A. No, sir; I cannot say; but there was considerable difference. I could not exactly remember the figures.

OSCAR ARROYO.

15 Sworn to and subscribed before me, at the city of New Orleans, this 17th day of April, A. D. 1875.

E. NORTH CULLOM,
*Judge Fifth District Court for the Parish of Orleans, La.*

Mr. Spencer offered in evidence the certified copies of the official returns for Lincoln Parish, hereto annexed and marked Exhibits 1, 2, 3, 4, 5, 6, and 7, respectively. (See appendix.)

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22 TESTIMONY OF CONTESTEE.

*Testimony of Gov. J. Madison Wells.*

W. B. SPENCER
*vs.*
FRANK MOREY.

Before me, E. North Cullom, the judge of the 5th district court of the State of Louisiana, in and for the parish of Orleans, personally came and appeared J. Madison Wells, a witness called on behalf of the contestee, Frank Morey, who, being duly sworn by me, makes the deposition which is hereto attached, and which was reduced to writing, in the words and figures as follows, at the city of New Orleans, in the State of Louisiana, on this the 17th day of April A. D. 1875:

Gov. J. MADISON WELLS sworn for the sitting member:

Question. Will you be kind enough to state your name and residence, and what official connection you had with the election of 1874?—Answer. James Madison Wells; a resident of the parish of Rapides, State of Louisiana. I was president of the board of returning-officers. I presided at all the meetings that were held; counted and promulgated the results of the election throughout the State for all officers voted for.

Q. Under what law was this election conducted?—A. Under the acts of 1874 and 1872; the act approved July 24, 1874, and the act approved 20th November, 1872, Nos. 18 and 127, hereto annexed and marked "Exhibit Laws." (See appendix.)

Q. Do you recollect that in connection with the votes of the parish of Carroll a protest was filed by Mr. Arroyo?—A. Yes, sir; and a subsequent reply was filed by myself.

Q. Will you examine that protest of Mr. Arroyo and this reply? Do you recognize that as a copy?—A. I think it is, sir; and here is my answer.

(Protest of Mr. Arroyo and reply of Governor Wells admitted and marked respectively L and M. See appendix.)

Q. I will ask you, governor, whether this statement was afterward corrected in some respects?—A. Yes, sir; it was corrected in my report to the legislature. (Report annexed and marked Exhibit N. See appendix.)

Mr. Morey offered the report of the returning-board; which was ordered to be marked Exhibit O. (See appendix.)

Q. Can you state anything which has any special bearing upon the returns of the parish of Lincoln, or the conclusion you came to, that is not based in your report?—A. No, sir; it is all in the report.

Q. Mr. Arroyo states that the board gave no reasons for their action.—A. Did he cite the case?

Q. No, sir.

Q. Will you state the course of procedure in the board, or is that set forth in the report?—A. Yes, sir; and it states here also in the report the withdrawal of Mr. Arroyo. It always took a vote upon the adoption of a count for promulgation before it was promulgated—before it was signed—and each member assigned his reason for voting for or against.

Q. Did the board go into secret session?—A. Yes, sir.

Q. What transpired?—A. It was to agree upon the count.

Q. In these sessions did you discuss the questions before you?—A. All the points in dispute.

23 Q. Fully and freely discussed?—A. Yes, sir.

Q. Each member had a chance?—A. Yes, sir.

Q. And the results obtained?—A. All by the vote of the board. In some instances there was a unanimous vote; in others a bare majority; in others four to one.

Q. Of the members of the board?—A. Yes, sir. Where there were four to one, Mr.

Arroyo voting in the negative. I do not think he signed—I do not think he signed the promulgation. I may state, sir, that he withdrew before the final canvassing and compiling for promulgation of the returns from various parishes—some six or eight. I do not know whether there were any of them in your district. I think not, however.

Q. Were all the papers that remained in your possession at the close of your labors transmitted to the secretary of state?—A. Yes, sir. The results of the labors, together with all the papers before the board in the shape of evidence, was also sent in.

Q. Did you cause official promulgation of the results to be made in the official journal of the State?—A. Yes, sir.

Q. Were they correctly promulgated?—A. Yes, sir.

Q. Examine that extract of the official journal of the 25th December, and state whether it is a correct statement of the results in the fifth Congressional district.—A. Yes, sir; I think it is correct. Mr. Arroyo was not a member of the board; had resigned before this was promulgated. I offer this as a copy of the official statement of the promulgation of the votes cast in the fifth Congressional district for Congressman. (Marked Exhibit P. See appendix.)

Q. The tabulation of returns that you made was done pursuant to law?—A. It was so.

Q. Were the uncontested polls and parishes compiled before those that were contested?—A. No, sir. Only in promulgating the vote of the State, I think, it became necessary to promulgate the returns of parish officers—promulgate the returns of the parishes—because by an agreement of the board we agreed to promulgate the first, I think, and the second Congressional districts, and consequently had to promulgate the parishes before a general promulgation; but this was not done until we had gone through the vote according to law, and were taking up the contested precincts.

Q. Of those parishes and in this district?—A. Yes, sir.

Q. Was not that action acquiesced in by the counsel for the Democratic party?—A. Yes, sir. That was the agreement before we went into the count of the votes. At first, before it was understood that our deliberations were to be secret, the count and exhibition of all the papers and evidence was to take place in the presence of the counsel and the board and the public generally. The doors were open, and everybody who desired to come in was admitted.

Mr. Morey now submitted an official copy of so much of the consolidated statement of votes cast in Lincoln Parish as relates to the vote cast for Congressman in that district and accompanying remarks, which are hereto attached and marked Exhibit Q; also, statement of votes and affidavits attached from poll 1, ward 1; poll 2, ward 1; poll 2, ward 2; poll 3, ward 3; poll 4, ward 4, and poll 5, with accompanying affidavits attached marked Exhibits 8, 9, 10, 11, 12, and 13, respectively; also, official copies of affidavits which were before the returning board touching the election in Lincoln Parish, and marked Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, respectively.

(The aforementioned, from Exhibit Q to Exhibit 23, inclusive, are excluded by agreement made between the parties.)

24 Cross-examination by Mr. CLINTON:

Q. This document marked Exhibit J is identical with the one Mr. Morey offered, is it not—these letters of Judge Dooley?—A. These letters were offered and read to the board.

Q. I will ask you, in the exhibit marked A, if this is not the official return made by the board, showing the vote for Gla, Benham, and Brigham?—A. Yes, sir.

J. MADISON WELLS.

Sworn to and subscribed to before me this 17th day of April, 1875, at the city of New Orleans, La.

E. NORTH CULLOM,
*Judge Fifth District Court for the Parish of Orleans, La.*

Mr. Morey submitted official copies of the returns, records, &c., pertaining to the election in the fifth Congressional district, in regard to the election in the parish of Concordia, and in regard to the election in the parish of Carroll, and marked respectively Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42. (See appendix.)

Mr. Morey also offered an extract from the platform of the party opposed to the Republican party in the election of 1874, which was admitted to be correct, and marked Exhibit R; also, tabular statement marked Exhibit S, and admitted to be correct by the counsel for Mr. Spencer. (See appendix.)

THE STATE OF LOUISIANA,
*Parish of Orleans:*

I, E. North Cullom, the judge of the fifth district court of the State of Louisiana in and for the parish of Orleans, do hereby certify that the within and foregoing record contains the testimony of the witnesses, Charles Cavanac, Oscar Arroyo, and Frank C. Zacharie, called on behalf of W. B. Spencer, contestant, and to J. Madison Wells, a witness called on

behalf of the contestee, Frank Morey, together with all the papers produced by either party and all the certified copies of official papers produced by either party.

Thus done and given under my official signature at the city of New Orleans, in the State of Louisiana, on this the 17th day of April, A. D. 1875.

E. NORTH CULLOM,
*Judge Fifth District Court for the Parish of Orleans, Louisiana.*

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## TESTIMONY IN CONCORDIA PARISH.

### TESTIMONY FOR BOTH PARTIES.

VIDALIA, LA., *March* 26, 1875.

We hereby waive objections to form and manner of taking testimony this day before Hon. J. S. Meng, parish judge.

WILLIAM B. SPENCER.
FRANK MOREY.

STATE OF LOUISIANA,
*Parish of Concordia:*

In the matter of the contest of William B. Spencer *vs.* Frank Morey, for seat in Forty-fourth Congress for fifth district of Louisiana.

Be it known that on this the 26th day of March, A. D. 1875, at the request of the
25 parties to the above cause, I, James S. Meng, sole presiding judge of the parish court of Concordia Parish, did cause to come before me, at my office in Vidalia, the witnesses whose names and testimony hereinafter appear, and, having duly sworn each of said witnesses to testify to the truth, the whole truth, and nothing but the truth, touching the matters to be inquired of them, I proceeded to examine them, and caused their several depositions to be reduced to writing and sworn to and subscribed before me, and which I hereto annex, together with copies of notice of contest, answer of contestee, agreements as to evidence, &c., which are hereto prefixed.

Witness my hand and the seal of said court, this 26th March, A. D. 1875.

J. S. MENG,
*Parish Judge.*

*Testimony of John F. Dameron.*

JOHN F. DAMERON, sworn for both parties, says:

At the general election held on 2d November, 1874, I was at the Vaucluse poll, fifth ward, Concordia Parish, and acting at said poll as a commissioner of election. Robert H. Columbus and Thomas E. D. Jefferson were the other two commissioners at said poll, and William C. Yarger United States supervisor at that poll. When the polls were closed on that day, between 6 and 7 o'clock p. m., the box was locked; I took the key in my possession, giving the box to Robert H. Columbus. We started for Vidalia, the parish-seat of Concordia, distant about sixteen miles. Upon reaching the store of T. C. Whitherspoon, on the road to Vidalia, the suggestion was made that I should take the box and ride in a buggy from there to Vidalia, which suggestion I acceded to and came on to Vidalia in company with Irvine in his buggy, one of the other commissioners riding in front and one in rear of the buggy on horseback. Coming on without any interruption, we reached Vidalia between 11 and 12 o'clock that night, and proceeded to the office of Burnett Hitchcock, tax-collector, up-stairs in the court-house at Vidalia. We then and there opened the box, and proceeded to the counting of the votes, up to half past 2 o'clock a. m. of the 3d November. When we closed the box, I locked it, and gave the key to Robert H. Columbus, taking the box with me, in company with William C. Yarger, United States supervisor, to the hotel in Vidalia. Putting the box under my bed in the room of the hotel, we went to sleep and slept till about 7½ or 8 o'clock in the morning. We then got up to breakfast, I taking the box with me to the table. After finishing breakfast, we went to the court-house, to Mr. Hitchcock's room again. Opening the box, we proceeded again to count the votes. After thus counting some time in Mr. Hitchcock's room, we closed the box, and moved down stairs into the court-room, where we proceeded until the count was completed. The reason we did not go to the court-room at first was that, on arriving at Vidalia, we found the court-room occupied by the commissioners of the Vidalia ward or precinct. We completed our returns on the night of the 3d November, between 10 and 11 o'clock, and made our returns to the supervisor of the parish on the next day, 4th November, between 12 m. and 1 o'clock p. m. In counting the votes, the tally-lists were kept by different persons, part of the time by Mr. Connell, part of the time by Mr. Joice, and part of the time by Mr. Nutt. The tally-sheets were kept
26 under the direction and supervision of the commissioners. There were in said box and

returned by said commissioners 441 votes for Frank Morey for member of Congress for fifth district, and 37 votes for William B. Spencer for member of Congress for fifth district of Louisiana.

During the night of 2d November, when we were counting the votes in Mr. Hitchcock's room, there were present, besides the commissioners, several persons, among whom was a candidate for police juror, and a candidate for magistrate of the fifth ward. Mr. Hitchcock's office was considered to be a public office, and any person during the time we were counting was privileged to come in. It was not a public office except for purposes of tax-collecting; and Mr. Ault, the deputy collector, gave us permission to use it. When I went to my meals during the time of counting, I left the box in the court-room, in charge of Mr. Columbus, one of the commissioners, and took the key myself; and when he went to his meals, he took the key and left me in charge of the box. The other commissioners did not take their meals at the same house with me, they being colored men. I am neither a Democrat nor a Republican, but an old-line Whig. The other two commissioners were Republicans. I was not considered to be a Republican. The labor of counting the votes was very considerable, as it was a general election, and quite a number of candidates voted for. I only heard two candidates make objections to our mode and manner of counting. No objection by anybody else was made to me. The votes cast at the fifth-ward box were counted and returned by the supervisor, as between all the candidates at said election. I don't think the tally-lists were very regularly kept, as we had no regular tally-keepers, and had to pick them up as we could get them. I believe the tally-lists were kept as correctly as they could have been kept under the circumstances.

I omitted in commencing my statement to mention the circumstances under which the box was removed from the polling-place, and the vote not there counted. When the polls closed, the other two commissioners refused to open and count the votes at the polls, they saying that the box ought to be taken to Vidalia and the votes counted there. Not having the book of instructions for holding the elections, I acquiesced in their wishes. I will further state that the reason why we suspended the counting of the votes on the night of 2d November was that the commissioners were tired and very much exhausted by the labors of the day and the long ride that night. I voted at said election for Macun for treasurer, Spencer for Congress, and for some Republicans for other offices. Said election was free and fair.

JNO. F. DAMERON.

Sworn to and subscribed before me, at Vidalia, this 6th March, 1875.

J. S. MENG,
*Parish Judge.*

## TESTIMONY FOR CONTESTANT.

*Testimony of William C. Yeager.*

WILLIAM C. YEAGER, sworn for plaintiff, says:

I was United States supervisor on the 2d November, 1874, at fifth-ward box in Concordia Parish. I have carefully read the testimony of John F. Dameron, this day taken and hereinbefore written, and I fully confirm the same, as containing a true and correct statement of the facts relative to the matters stated therein. As United States supervisor
27 aforesaid I made a report setting forth in substance the same facts to F. A. Woolfley, United States supervisor for the State of Louisiana, immediately after said election.

W. C. YEAGER.

Sworn to and subscribed before me at Vidalia, La., this 25th March, 1875.

J. S. MENG,
*Parish Judge.*

## TESTIMONY FOR CONTESTEE.

*Testimony of R. H. Columbus.*

ROBERT H. COLUMBUS, sworn for defendant, says:

I have carefully examined the testimony of John F. Dameron, taken this day in this cause, and hereinbefore written, and I fully confirm his statement of the facts relative to the election at fifth-ward poll of Concordia on 2d November, 1874, with the following exceptions: I made no objection to the opening and counting of the votes at the polls. Said election was free and fair.

R. H. COLUMBUS.

Sworn to and subscribed before me this 26th March, 1875, at Vidalia, La.

J. S. MENG,
*Parish Judge.*

*Testimony of Thomas E. D. Jefferson.*

THOMAS E. D. JEFFERSON, sworn for defendant, says:

I have carefully examined the testimony of John F. Dameron, taken this day in this cause and hereinbefore written, and I fully confirm his statement of the facts relative to the election at fifth-ward poll, Concordia Parish, on 2d November, 1874, with the following qualification and exception, to wit: I made no objection to opening and counting the votes at the polls, but stated I had served as a commissioner of election before, and always took the boxes to Vidalia to count them; and we had no instruction-book to guide us, and I did not know what else to do, believing that to be the law. I had left the instruction-book at home, having forgotten to take it with me. The election on that day was free and fair.

THOS. E. D. JEFFERSON.

Sworn to and subscribed before me at Vidalia this 26th ———, 1875.

J. S. MENG,
*Parish Judge.*

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## TESTIMONY TAKEN IN CARROLL PARISH.

### TESTIMONY FOR CONTESTANT.

*Testimony of T. J. Galbreth.*

T. J. GALBRETH, sworn on behalf of the contestant, William B. Spencer, testified as follows:

Question. Where do you reside; what is your occupation, and how long have you
28 been so occupied?—Answer. I reside in Lake Providence, Carroll Parish, Louisiana. I am deputy clerk of the district court, and have been since May, 1873.

Q. Have you not been the principal deputy, and as such had entire control of the office during your said occupancy?—A. I have, since the 26th day of July, 1873.

Q. Have or have not there at any time since the 2d day of November, 1874, been on deposit in the clerk's office of said parish any records of an election held on said day, including the ballot-boxes, lists of persons who voted and of persons voted for, and the offices for which they were voted, and of the number of votes received by each, the number of ballots in the boxes, the number of votes rejected, and reasons therefor, and tally-sheets, all signed and sworn to by the commissioners of election of each poll? And has any document or list of any character connected with said election, or any box containing the ballots cast at said election, been deposited in said clerk's office?—A. There have been none, except a tally-sheet handed me by a commissioner of the first ward, which tally-sheet was afterward taken out of my office and carried away.

Cross-examined by contestee, FRANK MOREY:

Q. Has dilligent search been made fer these ballot-boxes and papers appertaining to said election by yourself or others?—A. There has been.

Q. Do you know where these ballot-boxes and papers are?—A. I do not.

Q. Did you examine the one tally-list?

(This question is objected to by contestant, on the grounds that the proper evidences of an election are the official returns of the officers of election, and cannot be supplied by parol.)

A. I did, so far as it appertained to the election of senator for this district, but did not as to any other candidates.

Q. Were you not present when that tally-list was made out?—A. I was present when some tally-lists were made out at the first ward, but do not know whether this was one of them or not.

Q. How many tally-lists did you see made out?—A. Three.

Q. Were they all alike or did they all correspond?—A. They did; but after I came away a new set were made out, and I don't know what became of those I assisted in making.

Q. In regard to those which you helped make out, who assisted you?—A. T. B. Rhodes, E. Mayer, E. M. Spann, and, I think, David Jackson.

Q. Do you mean that the tally-lists that were out after you left differed from those you assisted in making in regard to the votes received by the candidates for Congress?—A. I cannot say whether they differed or not.

Q. Did the tally-lists that you saw made out give a correct statement of the votes as they were counted from the ballot-box?—A. If the man calling the names from the tickets called the names correctly, the tally-lists I assisted in making were correct.

Q. Was there any fraud or unfairness in counting the votes or making out the tally-lists that you saw or were aware of?—A. There was not.

Q. Who called off the votes when the tally-lists were made out that you assisted in making?—A. I think E. M. Spann called off for a couple of hours and then T. B. Rhodes. They were commissioners of election.

Q. Were there or not a number of spectators present during the counting?—A. There was.

29 Q. Did you or not hear any complaints of unfairness by any member of either political party in counting?—A. I did not.

Q. Do you remember how the ratio stood at the counting of the votes for member of Congress?—A. I do not remember.

Q. Were you present during the entire day at the election held at ward No. 1, held on 2d November?—A. I was.

Q. Did you pay strict attention to the manner in which the election was conducted as to its fairness or unfairness?—A. I did, and thought it a fair election.

Q. Did you hear any charges of unfairness made by either party during the day?—A. I did not.

Re-examined:

Q. Were you or were you not inside the room most of the day where the commissioners were, and therefore not in a position to know what was going on outside?—A. I think I was in and out of the room about equally during the day.

T. I. GALIBRUT.

Sworn to and subscribed before me this 27th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of R. M. Lackey.*

R. M. LACKEY, sworn on the part of contestant, William B. Spencer, testifies as follows:

Question. Where do you reside? And were you or not supervisor of registration and election for the parish of Carroll for the election of November 2, 1874?—Answer. I reside in the parish of Carroll, and was the supervisor of registration, as stated.

Q. Were or not the election returns of the election held 2d November, 1874, for Carroll Parish, which were put before and promulgated by the State returning-board, made out and signed by you?—They were not made out and signed by me or by my authority.

Cross-examined by contestee, FRANK MOREY:

Q. When did you first inform anybody of this fact?—A. This is the first time that I have spoken about it.

Q. Did you not tell any one that you could swear to this before this morning?—A. No.

Q. Then you have kept this fact to yourself until this morning?—A. Yes.

Q. How do you know that the returns put before the returning-board were not signed by you?—A. Because there were more votes on the returns before the returning-board as promulgated than there were on the returns I signed.

Q. What do you mean by saying there were more votes on the returns before the returning-board than were on the returns by you made; that is to say, were there more votes for all of the candidates or more for some of them?—A. There were some four of the candidates who were credited by the returns with more votes then they received or I returned for them.

Q. Did you ever see the signatures to the returns before the returning-board?—A. No.

Q. Were the returns which you signed correctly made up from the returns of commissioners of election?—A. Yes.

30 Q. Do you know that the returns which were before the returning-board differed from the returns which you signed in respect to the votes for member of Congress?

(This question is objected to by contestant, on the grounds that the returns themselves would be the best evidence of the matter inquired of.)

A. I know that they did differ.

Q. In what respect did they differ?

(Contestant makes the same objection to this question as to the preceding one.)

A. Because the Republican condidate for Congress, by my returns, did not receive more votes than the other Republican candidates.

Q. What vote did Morey receive for Congress according to your returns?

(Contestant makes same objection to this question as to the two preceding ones.)

A. About seventeen hundred and fifty votes.

Q. Do you mean seventeen hundred and fifty votes or seventeen hundred and fifty majority?

(Same objection by contestant.)

A. I mean seventeen hundred and fifty votes.

Q. Do you know how many votes were given for Morey by the returns before the returning-board?

(Contestant makes same objection to this question as to the previous ones.)

A. According to the official journal of the State, the returning-board gave Morey a little the rise of two thousand votes.

Q. Do you recollect what Spencer's vote for Congress was by the returns you made?

(Contestant makes same objection to this question as to the preceding ones.)

A. As well as I can recollect, Spencer's vote was something over four hundred and not exceeding five hundred votes.

Q. How many votes did Spencer get in the first ward?

(Contestant makes same objection.)

A. I do not recollect.

Q. How many did Spencer get in the second ward?

(Contestant makes same objection.)

A. I do not recollect.

Q. How many did Spencer get in the third ward?

(Contestant makes same objection.)

A. I do not recollect.

Q. How many did he, Spencer, get in the fourth or fifth ward?

(Contestant makes same objection.)

A. I do not recollect.

Q. Who assisted you in making up your return from the returns from the different polls in the parish?—A. W. W. Benham.

Q. Did any one else assist you?—A. James S. Millikin, one of my clerks. Both Benham and Millikin were commissioned clerks of the supervisor of registration.

Q. Did you discharge the duties of your office honestly and fairly according to the best of your ability?—A. I did.

Q. Mr. Spencer, in his notice of contest, charged that you were the mere tool of George C. Benham and others of Morey's supporters; is that true or false?—A. It is false.

31 Q. Do you recollect that according to the returns made by you, Morey received about the same vote in the parish that was cast for Dubuclet?

(Contestant makes the same objection to this question as to the previous ones.)

A. He did not receive the same vote as Dubuclet?

Q. What vote did Dubuclet receive in the parish?

(Contestant makes the same objection as before and as, also, irrelevant.)

A. As well as I can recollect, about two thousand or more.

Q. How many more do you think?

(Contestant makes same objection.)

A. I am unable to say.

Q. How do you know that Dubuclet received as many as two thousand?

(Same objection by contestant.)

A. Because he was a very popular man in the parish, and ran ahead of his ticket, many white men and Democrats voting for him.

Q. How many Democrats voted for Dubuclet to your knowledge?

(Objected to by contestant as irrelevant.)

A. I know of one who voted for him, and I heard others say that they had.

Q. Give the names of those whom you heard say so.

(Contestant makes the same objection.)

A. James S. Milliken, J. M. Gaddis, Joe Leddy, and James Leddy. These are all I now recollect.

Q. What is the total registration of this parish?—A. Twenty-five hundred and thirty.

R. M. LACKEY.

Sworn to and subscribed before me this 27th April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

Contestant offers in evidence certified copy of the entire record in case No. 6229 on the docket of the district court of Carroll Parish, entitled Nicholas Burton *et al. vs.* Charles Hicks *et al.*, marked Exhibit B.

Contestee Morey objects to this record on the grounds that it is *res inter alios acta.* (See appendix for Carroll Parish, Exhibit B.)

*Testimony of J. E. Burton.*

J. E. BURTON, sworn for contestant, William E. Spencer, testifies as follows:

Question. Where do you reside now and where did you reside on the 2d November, 1874?—Answer. I reside in Carroll Parish.

Q. Were you or not a candidate at the election on 2d November, 1874, on the Republican ticket in this parish? If so, for what office?—A. I was, for member of the house of representatives for the State.

Q. Did you ever examine the returns of said election that were before and that were canvassed by the State returning-board for the parish of Carroll?—A. I did.

Q. Did you see the signature of R. M. Lackey that was signed to said returns before the returning-board; and, if so, was it his genuine signature?—A. I have frequently seen Lackey's signature, and to the best of my belief his signature to said returns was not genuine. I think the handwriting was superior to what Lackey can write, but I cannot swear positively.

Q. Are you acquainted with the signatures of E. M. Spann, Thomas F. Montgomery, and R. M. Bagley?

(Contestee objects to this question.)

32 A. I am; but more particularly with Montgomery and Bagley's.

Q. From your knowledge of the handwriting of the said named persons, was the signature of E. M. Spann to the returns from ward No. 1 of this parish, of Thomas F. Montgomery to the returns from ward No. 2, and R. M. Bagley to the returns from ward No. 3, which were before the returning-board, the genuine signatures of those gentlemen?

(Objected to by contestee.)

A. They are not.

Q. Were you acquainted with the jurymen who tried the case of Nicholas Burton *et al. vs.* Charles Hicks *et al.*? If so, please state whether they all were or not members of the Republican party of Carroll Parish.

(Objected to by contestee.)

A. According to my belief and acquaintance with them, I being acquainted with every person on the jury, they were all Republicans.

Cross-examined by contestee:

Q. Please state whether or not there were two factions of the Republican party in Carroll Parish.—A. They were.

Q. Did or did not both factions generally support and vote for the constitutional amendments, for Dubuclet for treasurer, and for Frank Morey for Congress, from this district?

(Objected to by contestant.)

A. They did.

Q. Were you well acquainted with the sentiment politically of the Republicans throughout the parish, and were you or not one of the leaders of one wing of the Republican party in this parish?—A. I was well acquainted and was one of the leaders, as stated.

Q. Did you, either before or since the election, hear or know of any Republicans who supported or voted for William B. Spencer for member of Congress at the election in November last?

(Objected to by contestant.)

A. I know of but two; have heard of no others.

Q. Was not the suit of Burton *et al. vs.* Charles Hicks *et al.* a suit between Republicans growing out of a split in the party in Carroll Parish?

(Objected to by contestant.)

A. According to my belief there were Democrats on both sides of this suit; but the majority of the litigants were Republicans. All the parties to the suit were nominees of one or the other wing or the Republican party; but both of these wings supported Morey.

Re-examined for contestant:

Q. When you say that both factions or wings of the Republican party in Carroll Parish supported Mr. Morey for Congress, do you mean that all the members of that party voted for him, and was there or not considerable feeling against Morey among the members of that wing known as the Gla-Burton wing of said party, because of his favoring George C. Benham for State senate against Jacques A. Gla?—A. I mean that all the leading Republicans supported and advocated Mr. Morey, but I cannot say they voted for him, though I believe they generally did. There was considerable feeling against Mr. Morey among the Gla-Burton men of the Republican party on account of his (Morey's) favoring George C. Benham: I mean among a few of the leaders.

J. E. BURTON.

Sworn to and subscribed before me this 27th day of April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

Contestant here closed his evidence-in-chief, reserving the privilege to rebut.

33 TESTIMONY OF CONTESTEE.

*Testimony of John Scott.*

JOHN SCOTT, being sworn, testified as follows:

Question. Were you present at the election held at ward No. 3 on the 2d of November last?—Answer. I was.

Q. Was or was not the election at that poll fairly conducted as far as you observed?—A. It was, all but two things, which I did not think was right, to wit: That the tickets of some of our men, the Gla men, were taken away from them and torn up by the Benham men; and Captain Anderson, one of the commissioners, opened the tickets and looked at them before putting them in the box, sometimes pushing them in the box with the ink end and sometimes with the other end of his pen.

Q. There were two factions, the Gla and the Benham factions, of the Republican party, were they not?—A. There were.

Q. Did not both of these factions support Morey for Congress?—A. I believe they did; most of them, anyhow.

Q. Do you know of any Republicans who supported Spencer for Congress?—A. I don't believe I do.

Q. Do you know of any Republicans who did not support Morey?—A. I do not.

Q. There was considerable bitterness between the two factions of the Republican party in Carroll Parish, was there not?—A. There was.

Q. Was Morey's name on the tickets of both factions?—A. It was.

JOHN SCOTT.

Sworn to and subscribed before me this 27th day of April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Thomas F. Montgomery.*

THOMAS F. MONTGOMERY, sworn for Frank Morey, contestee, testifies as follows:

Question. Were you the Democratic commissioner at poll No. 2, in the parish of Carroll, on the 2d of November, 1874?—Answer. I was.

Q. Did you see any fraud or ill practices in the conduct of the election at that poll?—A. I did not.

Q. Was the counting of the votes and the making out of the tally-lists fairly conducted?—A. So far as I saw they were.

Q. Did you hear any charges of fraud or unfairness made?—A. Not during the election.

Q. If there had been any fraud or ill practices, would you not have been likely to have noticed it?—A. I would. I watched the proceedings quite closely.

Q. Did you make an affidavit regarding the votes cast at poll No. 2, which was used before the returning-board?—A. I did.

Q. Did you keep any memoranda or tally of the votes cast at poll No. 2?—I did not keep any memorandum of the vote, except between Benham and Gla, on a little piece of paper which I put in my pocket.

Q. Did you sign the returns from that poll?—A. I signed only the list of names of persons who voted; did not sign the tally-sheets or returns.

34 Q. Did you sign all the papers that you considered necessary in connection with the election?—A. I did not think at the time that it was necessary to sign other papers, and the other commissioners said they thought so, too.

Q. Do you know of your own knowledge that the statements of votes and tally-sheets that were kept and made out at poll No. 2, are not the same that were before the returning-board and canvassed by them?—A. I do not know anything about it.

Q. Do you recollect the number of votes cast at poll No. 2 for Spencer and Morey?

(This question is objected to by contestant, on the ground that the official returns are the proper and only evidence of the matter inquired about, and parol is inadmissible.)

A. I do not remember.

Cross-examined by WILLIAM B. SPENCER, contestant:

Q. At what time of the day were the polls at No. 2 opened, and at what time of day did you take your seat as commissioner of election?—A. I do not know when they were opened, I not being present. I took my seat as commissioner at said poll some time in the evening; I do not recollect the hour; some time between 1 and 3 o'clock, I think.

Q. At what hour did the polls close, and at what time did the counting of the vote close at said poll?—A. The poll closed at 6 o'clock Monday evening. The counting of the vote closed Tuesday night.

Q. Were the tally-lists, showing the votes of each candidate, made up and signed by you and the other commissioners in presence of each other after the counting of the vote?—A. They were not. I never signed the tally-lists then or at any other time, or saw any of the other commissioners sign them.

Q. Did not various and numerous other persons not commissioners of election, or connected with the election as officers, keep the tally lists as the votes were counted, and relieving each other, from time to time, as they saw proper?—A. They did.

Q. If your name appears on tally-sheets and statements of votes for poll No. 2, at said election, before the returning-board, were or not your signatures thereto forgeries?—A. They were forgeries if they so appear.

Q. Were not the other two commissioners of election who acted with you and who took charge of the tally-sheets and other papers pertaining to the election at poll No. 2 members of the Republican party?—A. I believe they were.

Q. Did you ever see the tally-sheet or returns of the election of poll No. 2 after the polls were closed on Tuesday night?—A. I never again saw them.

Re-examined by contestee:

Q. What persons kept the tally-lists during the counting of the votes?—A. Capt. W. B. Dickey, M. A. Sweet, and J. D. Therrell, and S. T. Austin, jr., for a short time. These

gentlemen took it alternately in keeping the tally, relieving each other. They kept it by consent and request of the commissioners. There was no charge that the tallies were unfairly kept, either then or since, that I have heard of. The tallies were kept in presence of such citizens as chose to attend.

TOM F. MONTGOMERY.

Sworn to and subscribed before me this 28th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

35 *Testimony of C. E. Moss, jr.*

Judge C. E. MOSS, sworn for contestee, Frank Morey, testifies as follows:

Question. Please state your name, residence, and occupation.—Answer. My name, Charles E. Moss, jr.; my residence, Carroll Parish; my occupation is parish judge.

Q. Where were you during the election on the 2d of November, 1874, and what do you know about the election?—A. I was at poll No. 1 on that day. Was there from daylight until 5 o'clock in the evening, being myself a candidate for parish judge and nominee of one wing of the Republican party, there being two wings of the Republican party in this parish. I belonged to what was known as the Benham wing. I was very active all day about the polls, and if I had seen anything that was wrong or unfair I would have objected, being interested in having the election fairly held. At the time of the election I heard no charges of unfairness made, and it was generally conceded that the election was fairly held. I heard no quarreling or unkind words, and everything seemed to pass off pleasantly. Some time after, when the suit of Burton *vs.* Hicks was about being brought, I heard charges made of great frauds made at that poll. I know of my own knowledge that these charges were false.

Q. Do you know about what number of votes were cast at said poll on said day?

(Contestant objects to this question on the ground that the election-returns are the only proper evidence of the votes cast.)

A. At 5 o'clock, when I left, there were five hundred and fifty-two votes cast.

Q. Can you tell about how many votes had been cast at poll No. 1 for Morey and Spencer, candidates for Congress, up to the time when you left?

(Contestant objects, on same grounds as last above stated, to this question.)

A. Nearly all the votes were for Morey. Mr. Morey was supported by both fractions of the Republican party at that box, and there were but four Democrats in that part of the parish and voting at that box. I did not know of or hear of any Republicans voting for Spencer or against Morey at that box. Morey's name was on tickets of both wings of the Republican party.

Cross-examined by contestant:

Q. Were there not reports made on the day of the election at poll No. 1 that J. A. Gla, candidate for State senator, had withdrawn, and did you not assist in circulating such reports?

(Objected to by contestee.)

A. About 10 o'clock on the election-day there was a circular which seemed to come from below, which contained the report that Gla had withdrawn as a candidate for State senator, which he, at the request of Mr. Sartain, read to quite a crowd standing around.

Q. Did you or not know that that circular was to be gotten up, and did you not assist in getting it up?

(Contestee objects to this question as irrelevant.)

A. Witness declines to answer on the ground that he might criminate himself.

C. E. MOSS, JR.

Sworn to and subscribed before me this 28th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Publi*

36 *Testimony of James S. Millikin.*

JAMES S. MILLIKIN, sworn for contestee, Frank Morey, testifies as follows:

Question. Please state your name and residence.—Answer. My name is James S. Millikin, and I reside in Floyd, in Carroll Parish.

Q. Where were you on the day of the election, the 2d day of November last?—A. I was at the fourth-ward poll, and a Democratic commissioner at that poll.

Q. How was the election conducted at that poll?—A. The poll was opened at the regular hour, and was conducted fairly, I think. I heard no charge of unfairness.

Q. Did you sign the election-returns of that poll?—A. I cannot recollect whether I did or did not, but I think I did all that was required of us by the printed instructions furnished for our guidance.

Q. Have you ever at any time made an *ex-parte* affidavit concerning the votes cast at said

poll at said election?—A. I have not, but Mr. McCandless told me he had, and that his statement was in accordance with the tally-sheets.

Q. Was Mr. McCandless a commissioner at that poll?—A. He was not a commissioner of election, but claimed to act under some authority; I don't know what.

J. S. MILLIKIN.

Sworn and subscribed to this April 28th, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of F. R. Barthelemy.*

F. R. BARTHELEMY, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name and residence.—Answer. My name is F. K. Barthelemy, and I reside at Goodrich's Landing, ward No. 1, Carroll Parish.

Q. State whether or not you were present at poll No. 1 during the election held November 2, 1874, and state what you know about the manner in which said election was held and conducted.—A. I was present, and the election was conducted fairly, without any disorder. I was present all day long, most of the time inside the room where the commissioners received the votes. Heard no charges of fraud or unfairness made by any one during the day. I was sworn in by the commissioners as clerk, and I assisted them in tallying the votes cast at said poll.

Q. Did you keep any memoranda of the votes cast at said poll for member of Congress and other officers? And, if so, state what it was.

(Objected to by contestant on grounds as heretofore stated.)

A. I did. Mr. Spencer received thirty-three votes; Mr. Mora five hundred and sixty-nine. I made this memoranda from the result of the tally-sheets, and it corresponded with that made by the commissioners of election.

Q. Did you see the commissioners sign the returns of said election at that poll?—A. I did. They were signed by E. W. Spann, T. B. Rhodes, David Jackson, who were the commissioners of election, E. M. Spann being the Democratic commissioner. They were also signed by Emanuel Moyer, who claimed to be deputy United States supervisor.

F. R. BARTHELEMY.

Sworn to and subscribed before me this 28th day of April, A. D. 1874.

S. DUNCAN GLENN,
*Notary Public.*

37 *Testimony of R. K. Anderson.*

ROBERT K. ANDERSON, being sworn for contestee, Frank Morey, testifies as follows:

Question. State your name and place of residence.—Answer. My name is Robert K. Anderson. I reside in Carroll Parish.

Q. Where were you at the election held on November 2, 1874, and what official position did you occupy?—A. I was at poll No. 3, ward No. 3, and was commissioner of election at said poll.

Q. Have you in your possession any of the returns of the election held at any poll in this parish? And, if so, state what.—A. I have. It is the duplicate return made up by the commissioners of election, and signed by them, for poll No. 1, ward No. 1, of this parish. The paper which I now exhibit is the said document.

(Certified copy of so much of said duplicate as related to the vote cast for candidates for Congress is hereto annexed and marked "Exhibit A."—(See appendix, testimony in Carroll Parish.)

(Contestant objects to the introduction of the said document on the grounds that it does not contain the oath of the supervisor of registration verifying it as required by law; that it is but a partial return of said election, not accompanied by the tally-sheets or list of voters at said poll, and has not been on deposit in the clerk's office, sealed up in the ballot-box for said ward with the ballots, tally-lists, and list of voters at said poll.)

*Testimony of F. R. Barthelemy (recalled).*

F. R. BARTHELEMY recalled by contestee, Frank Morey:

Question. Please examine the document produced by R. K. Anderson, and state whether you saw the same made out and signed by the commissioners, and whether the signatures thereto attached are the genuine signatures of the commissioners.—Answer. I saw the document made out and signed by the commissioners of election, and their signatures are genuine.

F. R. BARTHELEMY.

Sworn to and subscribed before me this 28th day of April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of R. K. Anderson (resumed).*

R. K. ANDERSON'S testimony resumed:

Question. State what you know of the manner in which the election was held and conducted at the poll for which you were commissioner.—Answer. The election was peaceable and fair. I knew of no charges of unfairness being made at the time. It was generally admitted by both Republicans and Democrats present at the polls that the election was free and fair. The ballots were counted at the poll under the direction of the three commissioners, namely, myself and Dub Anderson, Republican commissioners, and Robert M. Bagley, Democratic commissioner, all three of whom signed the returns. The returns were then delivered to the supervisor of registration at Lake Providence, parish-site.

38 Q. How many votes were cast at said poll, and what was the vote cast at the said poll for W. B. Spencer, and how many for Frank Morey, candidates for Congress?

(This question is objected to by contestant on the grounds heretofore stated, and on the grounds that the returns are the only proper evidence of the matters inquired of.)

A. My recollection is that there were five hundred and fifty votes cast in all. There were seven votes cast for Spencer, two blank as to member of Congress, and the balance for Morey.

Cross-examined by contestant:

Q. When were the returns of said poll signed, where, and were they signed in duplicate or only one set made out?—A. They were signed and sworn to the next day after the election, not at the polls, but at Providence. They were sworn to before S. T. Austin, justice of the peace; said returns were not made in duplicate, but a single copy made.

Q. In stating the number and result of the votes at said poll, are you positive, or do you only speak from memory?—A. I speak from memory only as regards the total number of votes cast. I am positive as to the two blank votes and the number of votes by Spencer; am positive that Morey got the balance. I am positive that there were more than five hundred votes cast.

R. K. ANDERSON.

Sworn to and subscribed before me this 28th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of David Jackson.*

DAVID JACKSON, sworn for contestee, Frank Morey, testifies as follows.

Question. State your name, residence, and occupation.—Answer. My name is David Jackson; I reside in Carroll Parish, ward No. 1, and am clerk of the district court.

Q. Where were you during the election held November 2, 1874?—A. I was at poll No. 1, and a commissioner of election there. Was present from the time the polls opened until they closed, and remained until the vote at that poll was counted, and assisted in counting the same.

Q. Did all the commissioners assist in making the count of the vote cast, and did they all sign the returns?—A. They did.

Q. How many copies of the returns were made?—A. Three copies.

Q. Examine the document presented by R. K. Anderson as a return from the first ward, and state whether it is one of the original returns made out and signed by yourself and the other commissioners of election.—A. It is one of the originals, and was signed by myself and the other commissioners after we had counted the votes at that poll. The other commissioners signed in my presence.

Q. Does this return contain a correct statement of the vote cast for member of Congress and other candidates at that poll?

(Contestant objects to this question.)

A. It does.

(Certified copy of a portion of the document referred to appears in the record marked "Exhibit A.")

Q. Did you have a good opportunity to see and to know how the election was conducted at that poll? And, if so, state what you know of it.—A. I had a good opportunity. The

39 election was conducted peaceably, and as fairly as an election could be; I heard no charges of unfairness made by anybody; every voter had a chance to vote as he saw fit. Mr. Spann, the Democratic commissioner, kept the list of votes; Mr. Rhodes, the Republican commissioner, kept the tally-list, and I took the votes as they were handed in by the voters and put them in the ballot-box. The various candidates and others had access to our room in which we received the votes, so that they could see that the election was conducted fairly. There was no dissatisfaction expressed by any one as to the manner in which the election was conducted.

Q. Did the voters generally hand you their ballots?—A. They did.

Q. Was or not there a large crowd about the voting-place at certain portions of the day, who were anxious to vote without much delay?—A. There was.

Q. Did or not a portion of this crowd try to vote ahead of others, out of their "turn," as it was called? And, if so state how it was done.—A. A good many would crowd up to the window where the box was, and try to vote one before the other. Some of them had short sticks with the ends split, to which they stuck their ballots and handed them up to the commissioner ahead of others who were nearer to the ballot-box.

Q. Did not you take all the votes that were so handed by the voters and put them in the ballot-box?—A. The voters handed up the registration-papers with their votes. I handed the registration-paper to Mr. Rhodes the other commissioner, who indorsed it. I then put the ballot in the box.

Q. Where was the ballot-box placed?—A. Right in the window, in sight of the voters who were outside. Each voter who wished could see me deposit the vote in the box.

Q. Do you know Cæsar Johnson? What is his reputation?—A. I know him, and do not think he has a very good character.

Q. Would you believe him under oath?—A. I would not.

Q. Who handed back the registration-papers to the voters after they were indorsed by the commissioner?—A. They were handed back by myself or by Mr. E. Mayer, who claimed to be acting as the Democratic deputy United States supervisor.

Q. Was there or not any money handed back by yourself or any other person with the registration-papers?—A. There was not.

Q. Did or not you hear of any such report or charge being made during the day of election by any member of either political party?—A. I did not. I would most likely have heard any such report had it been made.

Cross examined by contestant:

Q. Are you or not a member of the Republican party and a strong and active partisan of the same?—A. Am a strong Republican, but do not think I am a very active politician.

DAVID JACKSON.

Sworn to and subscribed before me this 29th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Robert M. Bagley.*

ROBERT M. BAGLEY, sworn for Frank Morey, contestee, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the
40 2d November, 1874, at the election, and what position did you hold?—Answer. My name is Robert M. Bagley. I reside in the third ward, parish of Carroll, am a planter and a merchant, and was appointed and served as Democratic commissioner of election for poll No. 3, parish of Carroll.

Q. Were you present all day during the election and afterward until the vote cast at said poll was counted?—A. I was.

Q. State how the election at that poll was conducted.—A. The election was conducted very loosely. I know that the law was not complied with in many instances. There were a great many charges of unfairness which I, as commissioner, attempted to correct, but was overruled. There was some disturbance on the day of the election between contending parties, especially among the constables, who were very partisan, all belonging to the same side. Candidates for office were allowed to keep the tally-sheets.

Q. Specify the instances in which the law was not complied with.—A. Parties were allowed to vote who I know were under age, and others who had not proper registration-certificates. The ballots were not counted nor returns made out until thirty-six hours after the closing of the polls. The official count upon which the returns were made was made in Providence thirty-six hours after the close of the election. The box was opened at the poll at the conclusion of the election and the names of persons voted for called off; but there was no official count kept of them at that time.

Q. Did you or not yourself keep an account of the votes that were cast at that poll as made out from the actual count of the votes cast?—A. I kept one of the tally-sheets; whether the count was correct or not I do not know. I tallied as the names were called from the ballots.

Q. Who called the names from the ballots?—A. R. K. Anderson, one of the Republican commissioners.

Q. Were or not the votes called off in the presence of other parties?—A. There were other parties in the room. Whether they saw the names on the tickets called I do not know.

Q. Did the tally-sheet that you kept agree with the return from that poll which you signed and swore to as being correct?

(Contestant objects to this question.)

A. The tally-sheet which I kept did correspond with the return which I signed and swore to.

Q. Did not the commissioners adopt the tally-sheet which you kept as the correct tally-sheet?

(Question objected to by contestant.)

A. They did, because the balance of the tally-sheets did not correspond.

Q. On the return which you swore to as being the correct statement of votes cast at poll No. 3, how many votes were cast for William B. Spencer for Congress and Frank Morey for Congress?

(This question is objected on grounds previously stated to other questions by contestant.)

A. I do not remember either now well enough to swear to them.

Q. Did you or not make affidavit, which affidavit was before the returning-board, in which you stated the exact number of votes cast for W. B. Spencer and for Frank Morey for Congress, and which affidavit stated that this was the vote stated in the returns which you signed and swore to as being the correct statement of the votes cast for Morey and for Spencer, respectively, at poll No. 3?

(This question objected to by contestant.)

41 A. I know I made an affidavit before the returning-board, and think, though I am not positive, that I stated therein the vote for Morey and Spencer. My statement in that affidavit, whatever it was, was correct.

Q. If in that affidavit you swore that William B. Spencer received seven votes and Frank Morey five hundred and ten, was or not that the correct statement of the votes cast for those persons?

(Contestant objects to this question.)

A. It was.

Q. Do you know of any person at poll No. 3 who was prevented from voting by any disturbance which took place on the day of the election?—A. I do not.

Q. Do you know of any person at poll No. 3 who voted for Morey for Congress who did not do so of his own choice?—A. I do not.

Q. Was anybody arrested, or did you, as commissioner, arrest, ask to have arrested, or issue a warrant for the arrest of any person for violation of the election-law at poll No. 3 on the day of election?—A. I did not.

Q. When you stated that the counting of the ballots was not commenced until thirty-six hours after the election, do you mean that the counting of the votes which you tallied, and which was adopted by the commissioners as the correct tally, was not commenced till thirty-six hours after the election?—A. What I mean by the official count having been made at Providence is this: At the conclusion of the tallying of the votes at the poll, and, I think, without having cast up the tallies, the ballot-box, with the tally-sheets, votes, &c., in it, sealed up, was taken to Providence by R. K. Anderson and Nelson Blackwell, Republican deputy United States supervisor for said poll, to be delivered to the clerk of the court. I went to Providence on Wednesday, and, with the other commissioners, recounted the votes, finding them to correspond with the tally-sheets; we made up the returns and signed them, and swore to their correctness.

Cross-examined:

Q. When you state that on getting to Providence you and the other commissioners recounted the votes, do you mean that you again called over and tallied each name on each ticket, or that you only counted the number of tickets in the box?—A. I mean that at Providence we only counted the number of tickets in the box, and did not tally them over again.

Q. Were you or not, after closing up the box and tallies and ballots at the polls, constantly with that box until your returns had been made and sworn to; and where was the box in the mean time?—I was not constantly with it. I saw the box in Providence on Tuesday evening, in possession of the Republican deputy United States supervisor, and Mr. Anderson. They took the box out of Providence that evening. I do not know of my own knowledge where they took it.

Q. Why were you not with that box all the time?—A. We, the commissioners, agreed to put the box in the hands of the said United States supervisor to bring to Providence. This arrangement was made for our mutual convenience.

Q. In making your tally-list, did you verify it by the votes themselves?—A. I did not.

Q. Did you see what purported to be your signature to returns and tally-sheets put before and canvassed by the State returning-board; and, if so, were your signatures thereto genuine?—A. I did see said returns, and what purported to be my signature to the returns of poll No. 3 was a forgery.

42 Q. You have stated that you did not take any steps to arrest disturbers of order at said poll No. 3; why did you not do so?—A. Because I was not conversant with the election law and did not know that I was authorized to do it.

Q. Did you see at said poll any undue influence or effort to prevent voters from voting as they wished; and, if so, what?—A. I did see undue influence used. I saw one man have nearly all of his clothes torn off of him by parties attempting to get him to vote as they wished. The man told me afterward that he would have voted differently, but was afraid.

Re-examined by contestee, FRANK MOREY:

Q. Was there any material difference between the tally-sheet kept by you and that kept by other parties; and, if so, what?—A. There was a considerable difference; I cannot state the exact amount.

Q. This man who told you he would have voted differently, did he tell you he would have voted differently as to member of Congress?—A. He did not.

R. M. BAGLEY.

Sworn to and subscribed before me this 29th day of April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of T. B. Rhodes.*

T. B. RHODES, sworn for contestee, Frank Morey, testifies as follows:

Question. What is your name, residence, and occupation?—Answer. My name is Thomas B. Rhodes; my residence is in Carroll Parish; my occupation, a planter.

Q. Were you a commissioner of election at poll No. 1, Carroll Parish, at the election 2d November, 1874?—A. I was.

Q. Were you present at said poll during the entire day of the election?—A. I was.

Q. Did you see any fraud or ill-practices at the election held at that poll?—A. I did not.

Q. Did you hear of any at the time?—A. I did not.

Q. Did you take part in counting the votes?—A. I assisted in counting the votes.

Q. Were the votes fairly counted and were the tally-lists and returns accurately made out?—A. They were, so far as I know.

Q. Do you remember how many votes were cast at that poll for W. B. Spencer for Congress and how many for Frank Morey? If so, state the number.

(Contestant objects to this question.)

A. Thirty-three votes for Spencer and five hundred and sixty-nine for Morey.

Q. Was any one compelled at that poll to pass his ballot up to the commissioner on a stick?—A. No one was.

Q. Could not every elector have voted with his hand from the ground?—A. All could have done so.

Q. Was any one permitted to vote at that poll who did not present the proper registration-papers?—A. Not that I know of.

Q. Was there any Democrat present during the election at that poll?—A. There was; Mr. Spann, a commissioner, was present.

Q. Did he take exception to anything that was done in the conduct of the election?—A. He did not.

43 Q. Please state how the ballot-box at that poll happened to be placed at a window.—A. We commenced voting at the door of the building in the morning, and nailed strips across the door to keep the crowd out. The crowd became so noisy and so eager to vote that in pressing against the strips they broke them off. Some one then proposed that the box be removed to the window. It was then placed on a table by the window, so that the top of the box was above the window-sill.

Q. Was there any objection on the part of the Democratic commissioner or any party present to placing the box at the window?—A. There was no objection, but it was suggested by some one that each voter had a right to place his ballot in the box with his own hand. So we caused it to be proclaimed that any one who wished to place his ballot in the ballot-box himself could come in the room and do so; and, accordingly, many did do so.

Q. Could the ballot-box at the window be seen by the voters outside?—A. It could be seen by the voters all the time from the outside.

Q. How high was the window from the ground?—A. I measured it, and my recollection is that it was between 5 feet 8 inches and 5 feet 10 inches from the ground.

Q. The document produced by R. K. Anderson and purporting to be one of the original returns from poll No. 1 is here produced. Is your signature to this document genuine?—A. It is. I made out the returns and signed them in the presence of the other commissioners and they signed it in my presence, and the statement of the votes therein given is a correct statement of the votes cast at that poll.

Cross-examined:

Q. You stated that the voter could at all times see the ballot-box at the window. Do you mean by this that the person approaching the window to hand in his ballot could at all times see the box and the deposit of his ticket therein?—A. No, sir; I meant that in the first portion or the day, when the box sat close to the window, a person handing up his ticket could see it put in the box; that later in the day, on account of the voting on sticks, we moved the box back from the window, when a person close to the window could not see his ticket deposited.

Q. Do you know that all the men handing up tickets and registration-papers to vote were the men named in the registration-papers?—A. I do not.

Re-examined by contestee;

Q. Was any charge of fraudulent voting made at the time of the election by any one?—A. Not that I heard.

Q. Did not the possession of the certificate of registration entitle the holder thereof

vote, unless it was charged and proven that the holder thereof was not the person named and described therein?—A. That was the practice there and my understanding of the law.

THOS. B. RHODES.

Sworn to and subscribed before me this 29th day of April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Charles E. Moss (recalled).*

Judge CHARLES E. MOSS recalled for contestee, Frank Morey:

44 Question. State what you know of the matter of voting on sticks at poll No. 1.—Answer. This voting was done at a negro cabin. There was a large crowd around the window, and some voters who could not approach the window, in order that they might vote earlier, placed their ballots on sticks and passed them up to the commissioner. There were perhaps sixty or seventy votes cast in this way.

C. E. MOSS, JR.

Sworn to and subscribed before me this 29th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of John M. Gaddis.*

JOHN M. GADDIS, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, occupation; where and in what capacity were you during the election on the 2d of November, 1874.—Answer. John M. Gaddis; fourth ward, Carroll Parish; physician and planter; and was commissioner of election at poll No. 4, parish of Carroll.

Q. State what was the character of the election held at that poll on that day, the number of votes cast at that poll, and the number received by each candidate for Congress.

(Contestant objects to this question.)

A. It was fair, quiet, and peaceable, and was so admitted at the close by everybody. There were two hundred and twenty-nine votes cast in all, of which number Frank Morey received one hundred and fifty-five and William B. Spencer seventy-four for member of Congress. At the close of the polls the votes were counted by myself and the other commissioners, the returns made up, and signed by J. S. Millikin and myself, and I am very certain by Mr. Pride, the other commissioner. Returns and poll-lists were then sent with the ballot-box and ballots, by J. S. Millikin, the Democratic commissioner, to Providence, to be delivered to the proper officer.

Sworn to and subscribed before me this 30th day of April, 1875.

J. M. GADDIS.
S. DUNCAN GLENN,
*Notary Public.*

*Testimony of M. A. Sweet.*

MARION A. SWEET, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were during the election held in this parish on the 2d of November, 1874.—Answer. My name is Marion A. Sweet: residence at Providence, ward No. 2, Carroll Parish; recorder for said parish; at poll No. 2 the greater portion of the day.

Q. Was the election at said poll fairly conducted?—A. It was.

Q. Did you hear any complaints made by any party on the day of the election at said poll?—A. I did not.

Q. Did general good feeling seem to prevail at the poll?—A. It did; everything seemed to be harmonious.

Q. Were you present at the tallying of the votes at that poll?—A. Only part of the time.

45 Q. Was the tally fairly kept while you were there?—A. It was.

Q. Did several parties keep tally?—A. They did.

Q. Were these tallies compared?—A. They were while I was tallying.

Q. Are you quite sure that, by means of this comparison, the tallies were correctly kept while you were present?—A. I am.

M. A. SWEET.

Sworn to and subscribed before me this 30th day of April, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of E. M. Spann.*

E. M. SPANN, sworn for contestee, Frank Morey, testified as follows:

Question. State your name, residence, occupation, and where you were on the day of the election held in Carroll Parish, on the 2d day of November, 1874.—Answer. My name is E. M. Spann; reside in the first ward Carroll Parish; am a planter; and was Democratic commissioner of election at poll No. 1 in Carroll Parish.

Q. Were you there all day?—A. I was.

Q. Did you assist in making up the returns at the close of said election?—A. I assisted in calling off the votes. T. B. Rhodes, another commissioner, kept one of the tallies, and somet oher parties present kept other tallies; finding, upon footing them up, the tallies did not all agree, we counted the votes all over again, and the tallies then kept did agree. The returns were then written up; there were either two or three copies; and the other commissioners and myself then signed them in the presence of each other.

Q. (The document A produced by R. K. Anderson being produced and exhibited to the witness.) Is this document one of the original returns made out at poll No. 1 and signed by you and the other commissioners, and does it give the true result of the election held at poll No. 1?

(This question is objected to by contestant.)

A. It is one of the original returns that was made up and signed by the commissioners, and it gives the true result of the election at said poll.

Q. After the returns were made out what was done with them and the other papers pertaining to the election at that poll, and with the ballot-box containing the ballots cast at that poll?—A. David Jackson, another commissioner, and myself took them to Providence, the parish-site, and deposited them in the office of the clerk of the court, all except the returns, one copy of which was left with the clerk of the court and another given to the supervisor of registration of the parish.

Q. Did the commissioners of election at that poll give the voters reasonable opportunity to vote, and was it or not generally admitted that the election was conducted fairly?—A. I think they had ample opportunity to vote. I heard no complaints against its fairness until after the election was over.

Q. Did you see or did you know of or did you hear of any greenbacks being handed out to voters by any commissioner or other person?—A. I did not see any thing of the kind, nor hear of it.

Q. Do you know Nicholas Burton?—A. I do.

Q. State whether or not he was present in the room with the commissioners frequently during the day of election watching how it was conducted, and whether or not he
46 made any complaint of unfairness to the commissioners or other persons, so far as you know or heard?—A. He was present the greater part of the day in the commissioners' room and seemed to be watching the voting very closely. I do not recollect of hearing him make any complaints while the voting was going on. He complained of being defrauded of a few votes between the first and second counts.

Cross-examined by contestant:

Q. If your name appeared upon returns from the first ward before the returning-board showing a different result from that now stated by you, was or not your signature thereto genuine?—A. My signature thereto, if such were the facts, was either a forgery or the return itself had been changed or falsified.

E. M. SPANN.

Sworn to and subscribed before me this 30th day of April, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of T. B. Rhodes (recalled).*

T. B. RHODES recalled for contestant:

Question. Have you had any conversation since the election on 2d November, 1874, with Nicholas Burton, regarding the fairness of the election held on that day at poll No. 1? If so, please state it.—Answer. The first conversation I had with him was the day after the election—the day we signed the returns. Burton was claiming to be United States commissioner at the poll. He said he thought we, the commissioners, acted fair in the matter. I wrote or dictated a certificate on the tally-roll that Mr. Mayer, the other United States commissioner, kept. The certificate stated, in substance, that the election was perfectly fair, and that tally-sheet exhibited the true result of the election at that poll. Mr. Mayer and Mr. Burton both signed the certificate. I had a conversation with Nicholas Burton again about a week after the election. He had just received the news of the election of Gla as State senator. Gla was a candidate on the same ticket as Burton. They were both colored men and nominees of the same wing of the Republican party. He said that he was satisfied that his wing of the party was overwhelmingly defeated in the parish, but was satisfied as Gla was elected senator from this district. He further said that the commissioners

at poll No. 1 should have given him thirteen more ballots than they did, for the last count gave him that many less than the first count did. He expressed his dissatisfaction in no other respect.

Q. Do you know a colored voter named Carson Johnson, and did you hear that he reported that "greenbacks" were handed out at the window at poll No. 1? And, if so, state what you know of him and of the story, and of the facts in the case.—A. I know him and heard him give his evidence to the effect stated before the district court. I know nothing of him personally, but I do know that his statement that David Jackson, one of the commissioners, rolled up greenbacks in the registration-papers and handed them back to the voters is untrue; because the tickets or ballots, together with the registration-papers, were handed up to David Jackson, who took the ballot and handed the registration-papers to me, which I indorsed "voted." Jackson then put the ballot in the box and I handed the regis-
47 tration-paper to Mr. Mayer, who was acting as Democratic United States supervisor, and who handed it out to the voter. I never heard this report from any other source, and I don't believe it was possible to be true without my having some knowledge of it.

THOS. B. RHODES.

Sworn to and subscribed before me this May 1, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Hiram R. Lott.*

Col. HIRAM R. LOTT, sworn for Frank Morey, contestee, testifies as follows:

Question. What is your name, residence, and occupation, and where were you at the election on the 2d day of November, 1874?—Answer. Hiram R. Lott; ward No. 4, Carroll Parish; planter; at Floyd, poll No. 4.

Q. State what you know in regard to the fairness of the election held at that poll on that day.—A. I was there most of the day, but not at the opening or closing of the polls. The election was a peaceable and quiet one, every one voting that wanted to, so far as I know. It was generally observed that the election was an unusually quiet one.

H. R. LOTT.

Sworn to and subscribed before me this 1st day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of William H. Stroube.*

WILLIAM H. STROUBE, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the day of election, 2d November, 1874.—Answer. William H. Stroube; Floyd, fourth ward; clerk, and member of police jury, and notary public. Was in the town of Floyd, poll No. 4, Carroll Parish.

Q. State what you know of the character of the election held at that poll on that day.—A. I was at the polls when they were opened; was there most of the day, and was there when they closed. So far as I know the election at that poll was free, fair, and peaceable. Heard no complaints at all, either then or since. I was present most of the time while the vote was being counted. I heard the result of the poll, but cannot remember now the figures.

Q. Do you recollect what the vote was at that poll for Spencer and for Morey for Congress? And, if so, state it.

(Contestant objects to this question on grounds heretofore stated.)

A. To the best of my recollection the vote as announced by the commissioners was for Morey one hundred and fifty-five and for Spencer seventy-four.

WM. H. STROUBE.

Sworn to and subscribed before me this 1st of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

48 *Testimony of P. Jones Yorke.*

P. JONES YORKE, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the 2d of November last at the election.—Answer. P. Jones Yorke; third ward, Carroll Parish; poll No. 3.

Q. State what you know of the manner in which the election at said poll was held and conducted.—A. Was at said poll nearly all day. The election was quiet and orderly, and the people voted promptly. It was as quiet and as fair an election as I ever saw. It was generally conceded that the election was free and fair by members of both parties. I remained all night and till the counting of the votes was finished next day, and until the tallies were made up and the ballot-box sealed.

Q. Do you recollect what vote was cast at that box for the candidates for Congress? If so, state what it was.

(Contestant objects to this question, as heretofore.)

A. I do not recollect the exact number, but there was between five and six hundred cast at that poll. They were nearly all cast for Morey, both factions of the Republican party voting for Morey. Spencer received only the votes of a part of the Democrats who voted at that box.

Cross-examined:

Q. Were you not a candidate on the ticket of one wing of the Republican party for the legislature?—A. I was.

P. JONES YORKE.

Sworn to and subscribed before me this 3d day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of B. H. Lanier.*

B. H. LANIER, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were at the election in Carroll Parish on the 2d of November last.—Answer. Benjamin H. Lanier; residence, Carroll Parish, Louisiana; was until March last editor of the Lake Republican, a newspaper published in Providence, Carroll Parish; am now tax-collector of said parish; was at poll No. 2, Carroll Parish.

Q. State what you know of the character of the election held on that day at that poll.—A. I was at and around the polls the entire day. The election was peaceable, quiet, and generally regarded as very fair. I remained at the polls until after the votes were counted, and assisted in keeping the tally-sheet.

Q. State, if you know, what the total vote was that was cast at that poll, and state the vote that was cast for the candidates for Congress, if you know.

(Contestant objects to this question, as heretofore.)

A. According to the best of my recollection, the entire vote for Congressional candidates was something over seven hundred. I think Spencer received forty-eight, forty-nine, or fifty votes, and Morey the balance of the total vote.

Q. Do you recollect whether or not the actual vote for the different candidates for State treasurer, Congress, and State senate was or not published in one of the newspapers
49 published at Providence, or an extra of the same; and, if so, in what paper, and was or not that publication a correct statement of the vote cast at poll No. 2 for the different candidates mentioned therein?

(Contestant objects to this question, as heretofore.)

A. True Republican, newspaper published at Providence, published a statement of the votes cast for the senatorial candidates, which I regarded as correct. This was published in an "extra."

Q. State whether or not this vote so published did not correspond with the vote announced at conclusion of the counting at poll No. 2.

(Contestant objects to this question as heretofore.)

A. The statement published in the True Republican did correspond with the actual count made by the commissioners at poll No. 2.

Cross-examined:

Q. Did you keep a tally during the whole time and continuously while that vote was being counted?—A. I did not. I think it took about twenty-four hours to count the vote, and it would have been impossible almost for a man to have tallied continuously for that time.

Q. Do you know of your own knowledge what the vote and result at that poll was?—A. In my direct examination I gave the result of that vote to the best of my knowledge and belief.

Re-examined by contestee:

Q. Were or not several tallies kept by different parties present, and if so, were or not they kept under the direction or supervision of commissioners at that poll?—A. There were three tally-sheets kept under the direct supervision of the commissioners at poll No. 2. One of these tallies I assisted in keeping. Those who kept each tally relieved each other from time to time in the labor.

B. H. LANIER.

Sworn to and subscribed before me this 3d day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of R. K. Anderson (recalled).*

R. K. ANDERSON recalled by contestee, Frank Morey:

Question. Please state whether or not you have any of the poll-lists or other evidences of the election held in November last in your possession or charge.—Answer. The one that I

produced when first examined I received from the clerk of the court. All the poll-lists and the returns made by the commissioners were made singly at the poll of which I was a commissioner, and I turned them over to the supervisor of registration, which I did not receive back from him. I had nothing to do with the election at any other poll, nor did I receive from the clerk or any one else any poll-list, tally-sheet, or return of the election. The tally-lists at poll 3 were made in triplicate.

Q. Did you see or do you know what disposition was made of the ballot-boxes containing the ballots cast at said election in this parish, or of any of the returns or other papers connected with said election?—A. The ballot-boxes containing the ballots were deposited in the office of the supervisor of registration when they were brought to the parish-site by the commissioners of election. I saw them there on the day after the election, or the next day. I know nothing of their disposition since then.

50 Q. Has or not a term of the district court been held in this parish since the election in November last?—A. There was a session commencing on the first Monday in December last, I think.

R. K. ANDERSON.

Sworn to and subscribed before me this 3d day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Charles H. Nash.*

CHARLES H. NASH, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on 2d of November last, the day of the election in Carroll Parish.—Answer. Charles H. Nash; Carroll Parish; planter; and am president of the police-jury, Was at poll No. 5 on the day of the last general election.

Q. Were you or not a member of the police-jury of this parish at the time and previous to the last election; and, if so, state whether in appointing commissioners of election the police-jury selected them from different political parties?—A. I was president of the police-jury at the time referred to. The police-jury appointed one democrat and two republicans at each poll in the parish.

CHARLES H. NASH.

Sworn to and subscribed before me this 3d day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of W. W. Benham.*

W. W. BENHAM, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the 2d day of November last, the day of the last election.—Answer. W. W. Benham; Carroll Parish; planter; was at poll No. 2 in said parish on the day of the last election.

Q. Were you one of the commissioners of election at poll No. 2?—A. I was.

Q. Were you present as commissioner of election at said poll all day, and did you assist in tallying the votes cast at that poll, and in making up the returns thereof?—A. I was present during the entire day; never left the poll from morning until night. I assisted in counting the vote by examining and calling off every ticket the ballot-box contained. The ballots, as I called them off, were tallied by several persons under the supervision of the commissioners, who relieved each other from time to time. There were three tally-sheets kept. The returns were made up from the result of the tally-sheets.

Q. During the day of the election what was your own particular duty?—A. My duty was to receive the registration-papers from the voters, compare them with the poll-book, and indorse "voted" on the registration-papers, and sign my name as commissioner of election to the registration-papers.

Q. Do you recollect how many votes were cast at that poll; and have you any memoranda, such as tally-lists, or lists of voters, or anything of that kind, pertaining to the election at said poll?

(Contestant objects to this question.)

A. Seven hundred and thirteen, as is shown by the list of votes kept by one of the commissioners of election. I have a list of the names of those who voted at that poll on that day.

Q. By whom was that list kept or made?

51 (Contestant objects to this question.)

A. Mr. Joseph Leddy kept the list until about 3 or 4 o'clock in the afternoon, and was then relieved by Thomas F. Montgomery, the democratic commissioner. When the polls opened in the morning there were but two of the commissioners present. In that case the law made it the duty of the two commissioners to appoint a third, which we did, appointing Mr. Joseph Leddy, at the suggestion of the by-standers, in the place of Mr. Thomas

F. Montgomery, who was absent. Mr. Leddy served as commissioner until the arrival of Mr. T. F. Montgomery in the afternoon, by whom he was relieved.

Q. Will you please produce the list of voters of which you speak?

(Document produced, certified copy of which is marked "Exhibit C," and attached hereto. See appendix, testimony in Carroll.)

(Contestant objects to the introduction of this document in evidence.)

A. This is the document.

Q. Who wrote and who signed the jurat attached to this document?—A. I wrote the jurat myself, following the form prescribed by law. It was signed by myself, T. F. Montgomery, and S. S. Murray, and the oath administered by F. T. Austin, justice of the peace, second ward. It was done at the polls immediately after closing the ballot-box, and before proceeding to count the votes.

Q. Did the number of tickets counted out of the ballot-box at the conclusion of the election correspond with the number of persons voted, as shown by this list?—A. It did, exactly.

Q. Were or not the ballots counted out of the ballot-boxes at the polls where they were cast, and the tally-sheets made up therefrom in the presence of such voters as chose to attend, and did not several voters so attend?—A. They were counted at the polls where they were cast without removing the ballot-box. The tally-sheets were made up in the presence of ten or fifteen voters, representing the Democratic party and both wings of the Republican party. Mr. Blount, the Democratic United States supervisor of election, stood over the ballot-box with me, and saw by the tickets as I held them in my hand that they were called just as they were printed or written.

Q. Of the votes cast at poll No. 2, state, if you know, how many were cast for W. B. Spencer and how many for Frank Morey, respectively, for Congress?

(Contestant objects to this question on the grounds heretofore stated.)

A. Upon summing up the tally-sheets on Congressional vote, there was found to be three or four votes less on the Congressional vote than the number of votes shown by the list. The vote for Spencer was either forty-nine or fifty; and the balance of the vote, less the three or four who did not vote for Congress, was the vote received by Frank Morey—six hundred and sixty or six hundred and sixty-one.

Q. In voting at that election, were or not all the candidates voted for on one ticket or ballot?—A. The names were all on one ticket.

Q. Then when you state that there were three or four less votes for candidates for Congress than for other candidates, do you mean that the names of the candidates for Congress were erased from the three or four tickets?—A. I do.

52 Q. Was or not the result of the vote given to the United States supervisor, or other person present, or publicly announced, as soon as the result was ascertained?—A. A memorandum of the vote was taken from the tally-sheets by Mr. Lanier and Capt. W. B. Dickey. The Congressional vote for the entire parish was given by me to Mr. Blount, United States supervisor of election, from the tally-sheets, after they were received from different polls.

Q. Do you mean after they were received by the supervisor of registration of the parish?—A. I do. They were in my possession as clerk of the said supervisor of registration.

Q. Do you recollect the number of votes that were cast in the parish for members of Congress, as shown by the returns from the different polls, as made to the supervisor of registration for the parish, and which were in his possession or in yours as clerk of the supervisor of registration? And, if so, state what the vote was.

(Contestant objects to this question on the ground as heretofore stated.)

A. I have forgotten the exact number of votes cast in the parish as shown by the returns in the possession of the supervisor of registration, but am of the impression that the entire vote was something over two thousand. And of that vote Mr. Spencer received something over two hundred, and Mr. Morey the balance.

Q. Are you not certain that the total vote cast for members of Congress was over two thousand?

(Objected to by contestant.)

A. I know that it was more than two thousand, but cannot recollect the exact figure.

Q. Who was the supervisor of registration for this parish?—A. Robert L. Lackey.

Q. Is or not he rather an illiterate colored man?—A. He is a colored man who reads and writes.

Q. Was the business of his office transacted by himself or his clerks?—A. Mr. Lackey was present to oversee the business of his office, which was done mainly by his clerks.

Q. Was there or not a consolidated return or statement of votes cast in the entire parish made up and signed by the said supervisor?—A. There was a statement made up and signed by him in my presence.

Q. From what data was this statement made up?—A. It was made up from the several reports of commissioners of election at the different polls.

Q. State, if you know, what was done with this consolidated statement.—A. It was delivered to the clerk of the returning-board in New Orleans, and his receipt taken for the same. This is the receipt.

This is a copy:

'75 NEW ORLEANS, *Nov.* 17, 1874.

"Received of supervisor one p'k'g, said to contain tally-sheets, statements, and votes according to law, for the parish of Carroll.

"CHAS. S. ABELL,
"*Ass't Sec'y.*"

Q. What was the character of the election held at poll No. 2, so far as peace, order, and fairness was concerned?—A. Everything was quiet the entire day. The Democratic commissioners expressed themselves as being perfectly sastisfied with the fairness of the count and the election generally. Heard no complaints as to the fairness of the election from anybody.

53 Cross-examined by contestant:

Q. Did you make your returns in triplicate or duplicate at poll No. 2?—A. We made them in duplicate.

Q. By whom and when were those returns signed, and before whom sworn to, if at all?—A. They were signed by the three commissioners of election, to wit, myself, Thomas F. Montgomery, and S. L. Murray, a day or two after the election, and I think on Wednesday, just as soon as the counting of the vote was finished. I don't recollect the magistrate by whom the oath to the returns was administered to the commissioners. The tally-sheets were not sworn to at all, the law not requiring it. The commissioners had several oaths to take. I recollect I swore to one before Mr. Lacky, J. P., one before Mr. Austin, J. P., one before C. E. Moss, parish judge, and one before T. R. Thrall, J. P.

Q. Were you and Mr. Murray the Republican commissioners at that poll; and, if so, to which wing of the Republican party did you belong, the Benham or Gla wing?—A. We were the Republican commissioners. I voted the Benham ticket. On the day of election we represented both wings. I don't know what ticket Murray voted. In the Congressional contest there was no contest between Benham and Gla; both supported Morey for Congress.

Q. Was or not S. L. Murray understood, known to be, and generally regarded in the community as a supporter of the Benham ticket?—A. I do not know.

Q. Who were the Republican commissioners at poll No. 3, and were they or not known and understood to be in the community as supporters of the Benham ticket?—A. R. K. Anderson and Dub Anderson. I believe R. K. Anderson was generally considered to be a supporter of the Benham ticket. Don't know myself how Dub Anderson stood or how he was regarded by the community.

Q. At poll No. 1 who were the Republican commissioners, and were they or not known and reputed in the community as supporters of the "Benham ticket"?—A. T. B. Rhodes and David Jackson. I don't know how Rhodes was regarded. Jackson was at one time connected with the "Gla wing." Later in the campaign he pretended to have been converted. I don't know how the community regarded him.

Q. Who made the deposit with and took the receipt of the clerk of the returning-board and for the consolidated returns of the supervisor of registration referred to by you?—A. I believe I did.

Q Have you had in your possession since the election the list of voters which you produced on your examination-in-chief?—A. It has been under lock and key in my possession ever since the night of the election.

Re-examined by contestee:

Q. In stating that the returns from poll No. 2 was signed by the three commissioners, do you or not mean the returns proper or the statement of votes, or the list of voters who voted?—A. I meant the returns. The list of the persons voting would hardly be considered a part of the returns necessary to be put before the returning board.

Q. Was not T. B. Rhodes, who was a commissioner at poll No. 1, considered a Democrat?—A. Two years ago he was connected with the Democratic party; don't know whether he held out faithful or not. Am of the impression that he was more of a Democrat than a Republican.

W. W. BENHAM.

Sworn to and subscribed before me this 4th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

54 *Testimony of W. B. Dickey.*

W. B. DICKEY, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the day of the election on 2d of November last.—Answer. William B. Dickey, Carroll Parish; my last occupation was deputy collector of United States internal revenue. Was at poll No. 2, Carroll Parish, on 2d day of November last, the day of election.

Q. How long were you at that poll on that day and immediately afterward?—A. Was

there all day until the poll closed. At the closing of the poll I retired and returned to the poll between 12 and 1 o'clock that night, when they were still engaged in counting the votes, where I remained until the counting was completed. When I came in between 12 and 1 o'clock that night, I took the place of Thomas F. Montgomery, Democratic commissioner at that poll, in keeping one of the tally-sheets, and remained until the count was finished.

Q. Was or not the election held at the poll peaceable, quiet, and fair?—A. It was, and was so generally admitted by all parties.

Q. Did you or not learn the result of the vote cast at that poll when the count was completed? And, if so, state what it was, if you recollect.

(Contestant objects to the question.)

A. I think the entire number of votes cast at said poll was seven hundred and nineteen. The vote for Senator was two hundred eighty-two for Gla and four hundred and twenty-seven for Benham. There were forty-nine for Spencer for member of Congress and for Morey six hundred and sixty-four or five for Congress. I do not recollect the vote cast for State treasurer, but that Moncure got about the same vote as Spencer did and Dubuclet about the same vote as Morey did.

Cross-examined by contestant:

Q. Do you know to what wing of the Republican party that W. W. Benham and S. L. Murray belonged, and to which branch were they reputed in the community to belong—to the Benham or Gla wing?—A. W. W. Benham belonged to the Benham wing. Couldn't say to which wing that S. L. Murrray belonged. Murrray was reputed to belong to the Benham wing.

Q. To which wing of the Republican party did R. K. Anderson and Dub Anderson belong, also David Jackson?—A. They belonged to the Benham wing.

Q. Did you hear any complaints on the day of election at poll No. 2 of persons taking tickets out of the hands of colored voters and tearing them up and giving them others?—A. I heard of no complaints till after the polls were closed.

Q. You state that you were not present during all the time that the votes were being counted and tallied; do you know of your own knowledge the truth of the statement of the votes given by you?—A. I only know that the three tally-sheets kept agreed at the end of the counting. I do not know of my own knowledge that these tally-sheets were correctly kept during the whole time of counting, and I was not present all the while. I know that mine was correctly kept from the time that I commenced keeping it.

Q. Are you positive about the Congressional vote, and have you never stated it differently?—A. I am positive about the Congressional vote, and do not recollect of ever having stated it differently.

Re-examined by contestee:

Q. Did you take any memoranda of any part of the result of the election at poll No. 2; and, if so, does the statement that you have made with regard to the vote for member of Congress agree with the memorandum that you took at the closing of the count?

(This question objected to by contestant.)

A. I did take a memorandum of the votes so far as the candidates for Senator, members of Congress, and house of representatives, and the memoranda so far as Congress is concerned agreed with my testimony on that point. I have lost all my memoranda except that of senator, or misplaced them.

W. B. DICKEY.

Sworn to and subscribed before me this 4th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of J. E. Leonard.*

J. EDWARDS LEONARD, sworn for contestee, Frank Morey, testifies as follows:

Question. What is your name, residence, and occupation, and where were you on the 2d day of November last, the day of the election?—Answer. J. Edwards Leonard; Carroll Parish; lawyer, and district attorney for thirteenth judicial district of Louisiana. I was in Providence, La., on the day of the election.

Q. Has Mr. Lackey, the supervisor of registration in this parish, and yourself ever had any conversation in regard to the vote cast in this parish at the last election or in regard to the returns made thereof? And if so, please state what it was.

(Contestant objects to this question.)

A. Shortly after the official returns for Carroll Parish were published in the New Orleans papers, Mr. R. M. Lackey was in my office, and I inquired of him whether the returns as published were correct and such as he made. I inquired particularly in regard to the vote for State senator. Mr. Lackey told me that the returns, as he made them, gave Benham twenty-two hundred and odd votes and Gla two hundred and odd; that Benham's majority in the parish was about two thousand; that he so returned.

Q. Did you vote at the election 2d of November last; and, if so, where and about what hour of the day did you vote?—A. I voted at poll No. 2, parish of Carroll, late in the afternoon.

A. Do you know of or did you hear of any complaints made on that day against the fairness of the election held at that poll?—A. I heard no complaints until a number of days after the election, when Nicholas Burton came to me to bring suit for him, the record of which was offered by contestant.

Cross-examined by contestant:

Q. Are not Dub Anderson, David Jackson, and S. L. Murray, who were commissioners of election, colored men?—A. They are.

J. E. LEONARD.

Sworn to and subscribed before me this 4th day of May, 1875.

S. DUNCAN GLENN,
*Notary Public.*

Contestee offers in evidence the report of the grand jury of the parish of Carroll, made at the December term, 1874, of the district court, and marked Exhibit D. (See appendix, testimony in Carroll Parsh.)

(Objected to by contestant.)

Contestee here closed his testimony this 4th day of May, A. D. 1875.

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## TESTIMONY OF CONTESTANT IN REBUTTAL.

### *Testimony of Nicholas Burton.*

NICHOLAS BURTON, sworn for contestant, testifies as follows:

Question. What is your name, residence, and occupation, and where were you at the election on 2d November, 1874?—Answer. Nicholas Burton; Carroll Parish; my occupation has been that of sheriff of the parish of Carroll; was at poll No. 1 on the day of election referred to.

Q. State what you know as to the manner in which said election was held at that poll, how the voting was done and where.—A. The election was held in an out-house, being one of the quarters owned by Captain Rhodes. In the morning of the election-day the ballot-box was at the door of the house. It was kept there about two or three hours; then they took it and carried it to a window, about 6 feet above the ground, and closed the doors of the house. The window had wooden bars across it up and down. After the box was moved to the window, about three-fourths of the votes polled were handed up on sticks from the ground. The others voted by reaching up with their hands. Those voting at the window could not, a man of them, see what was done with their tickets. At first the box was placed about 2 feet from the window-sill on a table, but the voters on the outside ran their sticks so far in as to annoy the commissioners, and they then moved the box about 4 feet from the window. This moving of the box back rendered it still more difficult for the voter to see what became of the ballot.

Q. Was any public announcement or proclamation made to the voters that those of them who desired could come inside the house and vote, and was the public admitted to said house?—A. There was no such proclamation or announcement made. The public were not allowed to come inside of the house, but the door was shut and barred and an officer stationed there to guard it.

Q. Did you or not see persons hand up at different times more than one ballot?

(Objected to by contestee on the ground, first, that contestant made no attempt or failed to produce any evidence-in-chief on this point; and, second, that this question or the answer thereto is not and cannot be in rebuttal of any evidence produced for contestee.)

A. I saw one person hand up four or five ballots.

Q. Did you see any one of the commissioners change ballots handed to him to be put in the box and put in a different ticket, and who was that commissioner?

(Contestee makes same objection to this question as above.)

A. I did see a commissioner at said poll do so, and that commissioner was David Jackson.

Q. Did you or not then and there remonstrate with him against such conduct?

(Same objection by contestee.)

57 A. I did, and said to him that "that was not fair to drop my tickets and put in his." He tried to bluff me out it, but I showed him the tickets he had dropped laying on the floor.

Q. Could or not the commissioners of election, where they sat while receiving votes through the window, identify and see who the person was who handed in his ticket?

(Same objection by contestee as above.)

A. The commissioners could not have done so without getting up and going to the window, which they did not do over one-tenth of the time.

Q. T. B. Rhodes has testified in this case to certain conversations with you relative to the election at poll No. 1 and the parish generally. I now read to you his statement. Did you have such conversations with him?—A. What I said to Captain Rhodes was this: I met Captain Rhodes a day or two after the election, and I told him that he had swindled me and my ticket out of eleven votes, and placed them to the credit of our opponents, that is, the Benham ticket. He denied it. That is the only matter that I talked with him about. I did not say or concede that my ticket had been overwhelmingly beat in the parish of Carroll.

Q. Are you not a member of the Republican party?—A. I am.

Q. Do you or not know that David Jackson, commissioner at first ward, poll No. 1, is a strong Republican, and was he or not a very active and even violent partisan during the last election?—A. To the best of my knowledge and belief he is. He attended every convention of the Benham wing of the Republican party and participated actively therein, as also in many of their political meetings.

Q. Are you or not acquainted with S. L. Murray, R. K. Anderson, and Dub Anderson, and do you or not know that they were active and known supporters of the Benham wing of the Republican party, and have you or not seen W. W. Benham in conventions and public meetings of said wing with them, and where they were supporting, by speeches, the Benham ticket?—A. I do know the parties named, and they were active supporters of the ticket named, and I have seen W. W. Benham in conventions and meetings with them, as stated in the question.

Q. Was or not there in the Gla wing of the Republican party of Carroll a strong feeling against Mr. Morey for Congress, on account of his supposed favoring of Benham against Gla?—A. There was among the leading Republicans of the Gla wing.

Cross-examined by contestee:

Q. You stated that those who did not vote on sticks reached up their own ballots. Could not all of the voters have done the same, had they chosen to do so, and waited for their opportunity?—A. I think they could if they had waited and taken their turn, provided they were men of ordinary height. But the little fellows would have to stretch mightily to have reached up to the window-sill.

Q. You said the window was about 6 feet from the ground. Are you positive that it was more than 5 feet 10 inches?—A. I measured it and made it a little over 6 feet; about one inch and a half over it.

Q. You said that the door was closed after the removal of the box to the window, and the voters were excluded from the room. Do you mean to say that the commissioners allowed nobody to come into or remain in the room after that time?—A. They allowed myself, who was sheriff, and other officers, such as constables, United States supervisors, and other officers, to remain in the room, but excluded those who were voting, so that all might vote at the window; but I got three of my friends in through the favor of the officer at the door, all of whom voted while inside. While the last one of these three was voting,
58 David Jackson objected to it, and I said, "Let this one vote and I will bring no more inside."

Q. Were you not inside of the room a greater part of the day?—A. I was.

Q. Were you watching the election pretty closely?—A. I was trying to, but they rather got away with me.

Q. How many ballots do you know were exchanged by David Jackson for others?—A. I could swear to only one which I saw him change, but there was another laying on the floor in the same position, but I do not know that this one was changed.

Q. What difference was there in the two ballots that was so exchanged?—A. Mine was a white ticket and his was what we called "calico-back." They had the names of different candidates on them for State senator, members of the house of representatives of the State, sheriff, parish judge, and other minor officers. They both had the same name for State treasurer and member of Congress on them. Both tickets had the name of Frank Morey for member of Congress on them.

Q. Who handed up the four or five ballots which you spoke of as having been handed by one person?—A. Cain Sartain, a candidate for the house of representatives on the Benham ticket.

Q. Did he not hand them up for voters who desired him to do so?—A. He said so after I stopped him. He said he could show the men whose tickets he handed up, and started off to find them, but did not come back. I do not know that he did not hand up these tickets at the request of voters, but I did not believe he did.

Q. Did anybody complain that Cain Sartain handed up tickets for them without their consent?—A. I heard no such complaint.

Q. Was not the registration-paper of the voter always handed up with the ballot?—A. I believe they were.

Q. Do you know of any other person, except Cain Sartain, who handed up the ballot,

either by hand or on a stick, whom you knew was not the party named in the registration-paper which accompanied the ballot?—A. Not to my own knowledge.

Q. Did you remain and watch the tallying and counting of the tickets out of the box and learn the result of the election at that poll?—A. I only remained part of the time. I was backward and forward until the close.

Q. Did the change of eleven votes for the candidates on your tickets, that you spoke of, result from a difference in the footing of the two sets of the tally-sheets?—A. The tickets were first tallied off once. While they were being tallied, David King, a friend of mine, and myself alternately, kept a tally of our own, and, at the conclusion, the result of the tally-sheets kept under the supervision of the commissioners, did not agree with mine at which I complained. They then made a second tally of the ballots, and it was by that tally that I lost eleven votes, which were placed to the credit of the other side, or the Benham party ticket.

Q. Did this change affect the result of the vote for member of Congress, that you know of?—A. I cannot state.

Q. Whose name, for member of Congress, was on the regular tickets of both wings of the Republican party at that poll?—A. The name of Frank Morey was printed on the regular ticket of both wings; but on a good many of these tickets William B. Spencer's name, in print on a slip, was pasted over the name of Frank Morey.

Q. Do you know, of your own knowledge, that any of these tickets with Spencer's name pasted on them was voted at poll No 1? And, if so, state how many and by whom they were cast.

(Question objected to by contestant.)

59 A. I know that some of them were voted; I do not know the number, but can state some of the names who voted them, to wit: J. G. Lynch, who says he was never a Democrat, but was an Old-Line Whig before the war, and who now calls himself a Conservative; three of the Bernds; who are Conservative; the two Meyers, Jacob Stein, all of whom are classed as Conservatives. These were all I can name, but I know of some others whose names I do not recollect. The Conservatives voted the "pasted ticket."

Q. What do you mean when you say that David Jackson was a violent partisan?—A. I mean that when he can't carry his point at political meetings by talking he is ready to do it by fighting.

Q. How many of the leaders of the Gla wing were there who had this feeling that you speak of against Mr. Morey?—A. There were five of them that I know of, to wit: J. A. Gla, Ed. Burton, Nicholas Burton, David King, Ed. Jackson, and Henry Atkins.

Q. Do you know that any of these did not support Mr. Morey for Congress, and did not the Gla wing generally support him?—A. I know three of them who did support and vote for him notwithstanding this feeling, and two of the others told me that they did the same, and the Gla wing generally supported Mr. Morey.

Q. Did you ever before swear as to the height of the window from the ground at poll No. 1, where the voting was done on the day of the election; and, if so, do you recollect to what you swore on that point?—A. I have frequently mentioned it, but I do not recollect that I ever swore to it. I frequently mentioned that it was between 6 and 7 feet, until I measured it.

Q. Did you not testify in the case of Burton and others against Hicks and others that you had measured the distance, and that it was 6 feet and 10 inches?—A. I don't think that I ever did; that is, I don't remember that I did.

Q. Are you the same Nicholas Burton who is a party to the suit of Burton and others *vs.* Hicks and others, in which it is attempted to set aside the election in this parish?—A. I am.

Re-examined:

Q. If you stated in your testimony in said case it was 6 feet 10 inches, was it not an error of yourself in stating or of the clerk in writing it down?—A. It was an error. I did not intend to so state it.

Q. Was or not William B. Spencer supported generally by the white people of Carroll Parish for Congress?—A. He was.

Recross-examined:

Q. When you say the white people of Carroll Parish supported Mr. Spencer generally, do you not mean the white Democrats or Conservatives?—A. I do.

NICHOLAS BURTON.

Sworn to and subscribed before me this 6th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of William Blount.*

WILLIAM A. BLOUNT, sworn for contestant, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the
60 2d of November last, the day of the general election.—Answer. William A. Blount; Carroll Parish; painter; was at poll No. 2. I was the Democratic United States supervisor for Carroll Parish.

Q. Were you present at the counting of the vote at poll No. 2 at said election, and who called the vote in counting them?—A. I was present. W. W. Benham called the vote.

Q. I now read to you the statement of W. W. Benham, that you stood over the ballot-box with him and saw the tickets as he held them, and that they were called just as they were printed or written. State the facts as they occurred, and is Mr. Benham's statement correct?—A. Not altogether is it correct. I was absent about half an hour of the time on Tuesday morning. When we first commenced counting the vote I watched it very closely for an hour or two; afterward I remained in the room, but did not all the time inspect the votes as they were called. They commenced counting the vote about half past 6 or 7 o'clock Monday night, and closed about 8 o'clock on Tuesday night. I do not know that the vote was correctly called.

Q. Were you, after the election, given an opportunity to inspect the tally-sheets, votes, and returns of any of the polls of Carroll Parish, and did you see them?—A. I did not see them. I waited around the building where they were supposed to be, to wit, the supervisor of registration's office, and asked many times to see them. I did not succeed in getting too see them.

Q. Did Mr. W. W. Benham furnish you with a statement of the votes which he in your presence took from the tally-sheets and returns?—A. He gave me a little strip of paper with some memoranda of the votes which he said the parties had got in the parish or at the second poll, I don't remember which; but I saw no tally-sheets or returns, and know nothing of the correctness of his said memoranda. That was all the information I was given or got of the result of the election.

Q. Do you know whether Thomas F. Montgomery, commissioner at poll No. 2, signed the returns and tally-sheets of said poll?—A. He did not sign them at the polling-place, and told me he never had signed them and never would sign them.

Q. Were or not R. K. Anderson, S. L. Murray, Dub Anderson, David Jackson, and W. W. Benham, known in the community as being active and zealous supporters and partisans of the Benham wing of the Republican party?—A. They were so known, and were among its strongest supporters.

Q. How is T. B. Rhodes classed and known politically in this parish?—A. As a Republican. I have never heard of him being anything else.

Q. How many white Republicans do you think are in Carroll Parish?—A. I suppose between one hundred and twenty-five and one hundred and fifty. Maybe not so many.

Cross-examined by contestee:

Q. When you left to go to breakfast the morning after the election, and was absent from the polling-place, as you say, about half an hour, was or not W. B. Dickey left in your place to watch the calling off of the names on the ballots?—A. I left him there to do that, but when I came back I found him at work on the tally-sheets.

Q. While you watched the calling off of the votes were they called correctly?—A. So far as I could see they were called correctly. I mean that during the time I inspected the tickets after they were called, they were called correctly.

61 Q. During the rest of the time that the counting was done in, did you or not from time to time, that is, occasionally during Monday night and Tuesday, pick up the ballots that had been called off and examine them in order to satisfy yourself that the calling off was progressing fairly?—A. I did examine them two or three times for that purpose.

Q. Did you detect any error in the calling off? If so, state what it was.—A. I did two or three times, in this wise: The name of Gla, Burton, and Spencer was incomplete, or not the full name, that is, did not have the initials. I called attention to the fact at the time. These votes were put down on the bottom of the tally-sheet, and not counted in the regular vote for these candidates under their full names, but were put down to the credit of the incomplete name as it appeared on the ballot.

Q. Did you not see the tally-sheets and other papers of poll No. 2 when the counting and tallying at the poll was completed?—A. I saw the list of voters who had voted and the tally-sheets about 8 o'clock Tuesday night after the votes in the box had all been called. The tally-sheets were not then cast up and carried out, nor signed by the commissioners; but Mr. Dickey figured up for his use and mine the number of votes that were cast for two of the candidates, to wit, Gla and Benham, candidates for State senate.

Q. Please state what that vote was.

(Objected to by contestant.)

A. The vote was: Gla, two hundred and eighty-two; Benham, four hundred and twenty-seven.

Q. Did you or not at that time ask for or take a memorandum of the vote for Spencer for Congress at that poll? And, if so, state what it was.

(Contestant objects to this as heretofore, as incompetent evidence.)

A. I did take a memorandum, and it was sixty-five votes.

Q. And what was the vote cast for Frank Morey for Congress at that poll?

(Same objection by contestant.)

A. I did not figure up his vote to see.

Q. Did not Mr. Dickey figure it up?—A. He might, but I did not see him.

Q. Did he not tell you what it was at that time?—A. Not that I remember.

Q. Have you not since that day stated to more than one person the vote cast for Morey for Congress at that poll? And, if so, state the vote that you told them.—A. I do not remember stating the number to any one, because I did not know what it was, and do not think I ever told anybody so.

Q. Were not T. B. Rhodes and E. J. Delong delegates from this parish in 1872, to the convention of the liberal party at New Orleans which afterward formed a part of the Fusion party, and which supported McEnery, the Democratic candidate for governor?—A. I do not know that Rhodes was, but Delong was.

Q. Was or not T. B. Rhodes the supervisor of registration in this parish in 1872, and was he not appointed by Governor Warmoth, and was not Warmoth supporting the Fusion ticket at that time, and was not Rhodes at that time considered or known to be a liberal, and not a supporter of the Kellogg or Republican ticket?—A. I believe he was the supervisor; cannot say by whom appointed. I cannot say of my own knowledge who Warmoth supported, but the impression generally was that he supported the Fusion ticket. I do not know how Rhodes stood politically in 1872.

Q. Have you ever made any statement of the election in Carroll Parish to the chief supervisor for this State of this judicial circuit at New Orleans?—A. I sent a statement to
62 A. J. Aiken at New Orleans, to be delivered to the Democratic central committee, giving a statement such as I got from deputies I appointed at different polls, but who not appointed were by Judge Woods, and whom I appointed, supposing I had the right to do it. I know nothing about the correctness of the statements I got from the deputies.

Re-examined by contestant:

Q. You say you counted sixty-five tallies on the tally-list of poll No. 2 for Spencer. From your knowledge of the persons voting at this poll, do you not believe that he received more than that vote in point of fact?

(Objected to by contestee.)

A. From my knowledge of the persons voting at said poll and the list of voters, I think Spencer received thereat more than sixty-five votes.

Recross-examined by contestee:

Q. Do you of your own knowledge, except as derived from the tally-sheet, know that Spencer received sixty-five votes at poll No. 2?

(Contestant objects to this question.)

A. Of my own knowledge, I don't know.

W. A. BLAND.

Sworn and subscribed to before me this 6th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of D. S. Vinson.*

Dr. D. S. VINSON, sworn for contestant, testifies as follows:

Qestion. State your name, residence, and occupation, and where you were on the 2d of November last, the day of the last general election.—Answer. Daniel S. Vinson; Carroll Parish; physician; was at poll No. 1.

Q. Please state how the election at that poll was conducted, and how and where the voting was done.—A. I was outside of the house, and know nothing that transpired inside. The voting, while I was at the poll, was done by handing the tickets or the ballots through the window. From my observation, without having measured it, the window was between 6 and 7 feet from the ground, where the voters stood. The window had slats across it, up and down, about 3 inches apart. Some of the voters handed their ballots up to the window on the ends of sticks, and some reached them up with their hands.

Q. Could the voter see the ballot-box from the place where he stood, and see what disposition was made of his ballot, and could he have deposited it in the box himself?—A. I do not think the voter could see the box, nor could he see what was done with his ticket, I think, because the window-sill was higher than a man's head. I am about six feet high myself, and did not see the box. I think a voter could not have put his ticket in the box with his own hand.

Q. Was or not the door leading into the room where the commissioners were kept closed while you were there?—A. Yes, sir. I did not see it open at all.

Q. From the situation, could the commissioners have seen the person handing up his ticket without coming to the window?—A. I think not.

Q. Did or not you see one same person hand up tickets more than one time to the window?—A. I did not.

Q. Did you vote on that occasion, and why not?—A. I did not vote, though I could
63 have done so: there was nothing preventing me, except I did not want to wait. There was no trouble that I saw about the poll. Everything was peaceable and quiet.

Q. How long were you present at the poll?—A. Between half an hour and one hour.

Cross-examined by contestee:

Q. How do you rank yourself politically?—A. I am a Democrat, dyed in the wool.

Q. How long have you resided in this parish?—A. Twenty-five years.

Q. Are you not generally recognized in the community as a good, substantial citizen?—A So far as I know. I have heard nothing to the contrary.

Q. How many voters did you see voting on sticks?—A. While I was there I did not see more than two or three. If I had been going to vote, I think I would have voted that way myself, as I could have done so more quickly than to have waited to have got closer to the window.

Q. You stated that you did not see the box; did you go up to the window to ascertain if you could see it?—A. I did not.

Q. Are you positive that the commissioners of election could not have seen the voters handing up their tickets?—A. I don't think they could, but am not positive.

Q. If a commissioner was sitting or standing close to the window, could he not have seen the voter?—A. I think he could.

Q. Are you acquainted with E. M. Spann and T. B. Rhodes, who were commissioners of election on that day? And, if so, state what their standing is in the community.—A. They are looked upon as good citizens.

Q. Are they or not men who would be believed to be truthful in making any statement which they might make under oath?—A. I should think they were. They are very correct men. I have never heard anything to the contrary.

D. S. VINSON.

Sworn to and subscribed before me this 7th day of May, A. D. 1875.

S. DUNCAN GLENN.
*Notary Public.*

*Testimony of Andrew Cnnningham.*

ANDREW CUNNINGHAM, sworn for contestant, testifies as follows:

Question. State your name, residence, and o cupation, and where you were on the second of November last, the day of the general election.—Answer. Andrew Cunningham; Carroll Parish; planter; was at poll No. 1.

Q. Please state where the election was held at poll No. 1, and how the voters deposited their ballots.—A. The election was held in a cabin on Captain Rhodes's place. The votes were received by the commissioners at a window, about six or seven feet from the ground. Some of the votes were handed up on sticks, and others voted by being lifted up by other persons, and some by reaching it up with their hands.

Q. Do you think that the ballot-boxes were in full view of the voters on the outside, and could they see their ballots deposited in the box, or could they themselves have deposited them therein?—A. The ballot-box I do not think was in full view of the voters; nor could the voters see their ballots deposited, or reach the ballot-box themselves.

49 Q. Are you acquainted with Cæsar Johnson, who swore, in the case of Burton *et al. vs.* Hicks *et al.*, that David Jackson, commissioner at poll No. 1, returned money with registration-papers, &c.? And, if so, please state his character for truth and honesty.—A. I know him. In the community where he live she is regarded as a truthful and reliable man.

Q. Do you think that the commissioners of election at poll No. 1, sitting where they were could see the voter when he handed up his vote so as to know who he was?—A. I know where the commissioners were sitting, and I do not think they could see so as to know the persons handing up ballots.

Cross-examined by contestee:

Q. How do you class yourself politically?—A. I take no part in politics, but suppose I would be ranked as a Democrat.

Q. How long did you remain at poll No. 1 on the day of election?—A. I suppose I was there about three hours.

Q. Was or not the election quiet, peaceable, and fair while you were present?—A. I heard no fussing, but there was considerable rushing and confusion around the window, caused, as I suppose, by their anxiety to vote early.

Q. Did you hear any complaint made of the manner of voting at that poll, or did it seem to be done as it were by general consent?—A. Yes; I heard complaint. When I managed to get inside of the house, and offered my ballot there, it was objected to by David Jackson, one of the commissioners, who was standing at the window receiving the ballots and taking them off the stick. He said he had ordered several times that no more persons should be admitted inside of the house. I offered my ballot, and stated that I was anxious to vote and get away, and that if I was not allowed to vote then I would have to leave without voting, and I threw my ballot down on the table. The commissioners looked at each other without saying anything, and Captain Rhodes, one of the commissioners, to

up the ballot and put it in the box. David Jackson then remarked that that was the last vote that should be polled inside of the house, and the other commissioners said nothing. I heard of no other complaint, but left the poll immediately.

Q. Did you see any greenbacks handed out by any commissioner, or do you know anybody who ever said they saw any greenbacks handed out at the poll except Cæsar Johnson?—A. I saw no greenbacks handed out. I heard a colored man, whose name I do not know, but who lives on Transylvania plantation, say that he himself called Cæsar Johnson's attention to the fact that greenbacks were being handed out to voters by David Jackson with the registration-papers, and that he proposed to Cæsar Johnson that they should turn and vote that way, and get some of the greenbacks.

Q. Do you know Dr. D. S. Vinson, who testified in this case this morning, and do you know T. B. Rhodes and E. M. Spann, who were commissioners of election on that day? And, if so, state what reputation they bear in the community for honesty and integrity.—A. I am acquainted with Dr. Vinson and T. B. Rhodes, and their reputation for honesty and integrity is good, so far as I know or have ever heard.

Q. Do you know C. E. Moss, jr., parish judge of this parish; and, if so, what is your opinion of his honesty and integrity?—A. I am acquainted with him. I know nothing wrong of him, so far as I know. I have no particular dealings with Judge Moss, but think well of him.

65 Re-examined:

Q. Is not Judge Moss a strong Republican and regarded as an active party man?—A. I have always understood that he was a Republican, but don't know how active, as I know very little about him.

A. CUNNINGHAM.

Sworn to and subscribed before me this 7th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Noah Lane.*

NOAH LANE, sworn for contestant, testifies as follows:

Question. State your name, residence, and occupation, and where you were on 2d of November last, the day of the general election.—Answer. My name is Noah Lane; Transylvania plantation, Carroll Parish; and was at poll No. 1 on the election-day.

Q. Did you vote and see others voting at said poll; and, if so, where and how did they vote?—A. I voted there and saw others vote. The door to the house was closed against us, and we voted at a window which was so high that I had to lift another man up to vote.

Q. Did you see David Jackson or other person at said poll hand money out of the window to persons on the outside? State what you saw.—A. I did see David Jackson hand money to voters outside of the window; saw him do it several times. When I saw him doing it I said, "O, by God, look at the greenbacks; let's wait and see if we can't get some of them." Cæsar Johnson then said, "No; perhaps they are running an independent ticket."

Cross-examined by contestee:

Q. Can you read or write?—A. No, I cannot; I am only a laborer.

Q. Did you get any of the greenbacks or money that was handed out?—A. I did not.

Q. Did your friend Cæsar Johnson get any?—A. No, sir.

Q. Why didn't you get some?—A. Because I was not voting the same ticket.

Q. Do you mean the independent ticket?—A. I mean I did not vote the independent ticket; I voted the Gla Republican ticket.

Q. Where was David Jackson standing?—A. In the house, near the window, where the voting was going on.

Q. Was he taking the ballots from the voters as they were handed in?—A. Yes, sir; he was.

Q. Did he take Cæsar Johnson's ticket when you raised him up to the window?—A. He did; saw him take it.

Q. Could you see him plainly?—A. Yes, sir; he came to the window, and I could see him plainly from his waist up and he could see me.

Q. What time of day was it when you went to the polls?—A. I went to the polls about 12 o'clock and staid until night.

Q. Were you near where the voting was going on while you were there?—A. Yes; I was out in front of the window most of the time.

Q. Did you see any voting on sticks?—A. I did not see or notice any.

66 Q. From where you stood, would you not have been likely to have seen the voting on sticks if there had been any?—A. Probably if I had been noticing I would, but I did not notice, and there was such a crowd standing around the window.

Q. How far were you standing from the window?—A. Probably 10 or 20 yards, as near as I can come at it.

Q. Then all the voters that you noticed voted with their hands, did they?—A. Yes, sir.

Q. Who took their tickets?—A. David Jackson took their tickets in.

Q. Did Cæsar Johnson go to the polls with you?—A. He started when I did, but did not get there as soon as I did. I was there when he came up. He and I went home together.

Q. How many people do you think voted while you were there?—A. I can't tell; there were a good many of them; they kept voting until night.

Q. Do you think there were five hundred voted while you were there?—A. That would be hard for me to say, because I do not know that there were five hundred there in al or not.

Q. Give the names of all those whom you saw get greenbacks.—A. I did not know the men; they were strangers to me. I did not know any of the men on the ground except Cæsar Johnson.

Q. How much money did each of the men receive?—A. I could not tell, but there were sometimes three or four bills.

Q. Was there never more than three or four bills?—A. I never saw any more than three or four bills, as the men would take and put them up so quick.

Q. How many men were there that you can swear you saw get greenbacks?—A. I saw about ten, as near as I can come at it.

Q. Now, how many of those men got as many as three bills?—A. I couldn't tell. Some of them came out in registration-paper. I saw two of them that had that money, and one of the bills was large enough for a dollar or five-dollar bill.

Q. Now, don't you know that it was Mr. Mayer that handed out all the registration-papers?—A. No, sir: I don't know that; I know that he didn't hand me mine.

Q. How many kinds of tickets were voted there that day?—A. I saw but two kinds. I cannot read. There was a white ticket—U. S. Grant; that is, with Grant's picture on it, and I voted that kind. The other was a kind of bluish curtain-colored ticket on the back side.

Re-examined by contestant:

Q. What do you mean by the independent ticket?—A. I mean the Benham Republican ticket.

his
NOAH + LANE.
mark.

Sworn to and subscribed before me this 7th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Cæsar Johnson.*

CÆSAR JOHNSON, sworn for contestant, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the 2d of November last, the day of the general election?—Answer. My name is Cæsar Johnson; I live in Carroll Parish; am a farmer, leasing land from Mr. Tilford; was at poll No. 1.

67 Q. State where and how the voters voted at said poll while you were there, and how it was managed.—A. I voted at the window, and all others who voted with me at same time did the same. I voted by the assistance of Noah Lane, who caught me under my arm and assisted me up so I could reach the window. I don't think a man standing on the ground near the window could see the ballot-box. I could not, I know.

Q. Did you or not see money passed out of the window to the voters with their registration-papers; and, if so, who did it?—A. I saw money passed out with registration-papers by David Jackson. I saw him do it several times.

Q. Did anybody speak to you about it at the time it was being done, and what did he say?—A. Yes, sir; Noah Lane spoke to me about it at the time, and said, "O, Johnson, look at the greenbacks; let's turn." I said, "O, no." He said, "Why?" and I said, "Maybe they are running an independent ticket." I voted the Gla Republican ticket, on white paper.

Cross-examined by contestee:

Q. Did you hear one man cry out, "O, Jackson, greenbacks!" and who was that man?—A. I did hear a man so cry out, but do not know the man.

Q. What kind of a looking man was he?—A. He was a black man; but I did not notice his features.

Q. Was he a tall man?—A. He was about the common height.

Q. Was he an old man?—A. No, sir.

Q. Did you notice particularly his age?—A. He looked quite young to me.

Q. Was he a fat man?—A. No, sir; he didn't look very fat.

Q. Was he a well-dressed man?—A. He looked to me to be poorly dressed.

Q. How far were you from him when he cried out, "O, Jackson, greenbacks"?—A. About 10 feet.

Q. Did he cry it out more than once?—A. No, sir.
Q. Can you read?—A. A little; coarse reading.
Q. Or write?—A. I can scratch a little.
Q. Are you a short man?—A. I am about 5 feet 2½ inches.
Q. When Lane helped you to put up your ballot, did he lift you off the ground, or did he stretch you up by assisting you by one arm?—A. He assisted me by lifting one arm, I at the same time helping myself up against the side of the house.
Q. Was there a pretty large crowd present when you got to the polls?—A. Yes, sir; a pretty large crowd.
Q. Did they all vote before you came away?—A. No, sir; I left them voting.
Q. How many do you think voted while you were there?—A. There was a pretty large crowd, but I cannot tell how many voted while I was there.

CÆSAR JOHNSON.

Sworn to and subscribed before me this 7th day of May, 1875.

S. DUNCAN GLENN,
*Notary Public.*

68 *Testimony of W. A. Blount (recalled).*

W. A. BLOUNT recalled by contestant.

Question. Were you or not in error in your estimate of the number of white Republicans in Carroll Parish? If so, please state the facts.—Answer. I was mistaken, as I spoke hastily and without time for counting and reflection. To the best of my knowledge and belief, there are not over forty white Republicans in Carroll Parish.

Cross-examined by contestee:

Q. Is there not a larger number than forty of white men in the parish who have generally supported Morey for Congress?—A. I cannot say.

W. A. BLOUNT.

Sworn to and subscribed before me this 7th day of May, A. D. 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of J. C. Purdy.*

J. C. PURDY, sworn for contestant, testifies as follows:

Question. State your name, residence, and occupation.—Answer. Jacob C. Purdy; reside in Providence, Carroll Parish, and am a merchant.
Q. Are you acquainted with Cæsar Johnson; and, if so, how long have you known him, and what is his character and reputation for truth and honesty?—A. Yes; I know him well, and have known him well for seven years. I consider him as honest a man as there is in the parish, and a truthful man.

J. C. PURDY.

Sworn to and subscribed before me this 7th day of May, A. D. 1875.

J. DUNCAN GLENN,
*Notary Public.*

*Testimony of J. E. Burton (recalled).*

J. E. BURTON recalled by contestant.

Question. How many professed white Republicans are there in the parish of Carroll, to the best of your knowledge and belief?—Answer. According to my knowledge and belief, there are between twenty-five and thirty. I have been actively concerned in politics in this parish, and was a candidate on the Gla Republican ticket at last election.
Q. Do you know W. W. Benham, B. H. Lanier, W. B. Dickey, and C. E, Moss; and, if so, what has been their politics and occupations since they have been in Carroll Parish?—A. I know them all. They are all office-seekers, and have, all of them, held office since I came here. I think Mr. Lanier acted as a bookkeeper for a short time. Dickey, Moss, and Benham always claimed to be a Republicans; Lanier—it is hard to tell what he is; sometimes he claims to be a Republican, and sometimes a Democrat.
Q. What offices has Mr. Lanier filled in this parish, and have not the Republicans had control of said offices?—A. Public administrator, deputy recorder, deputy tax-collector, and is now tax-collector.
69 Q. What offices has W. W. Benham filled, and how many at any one time?—A. He was deputy sheriff, deputy tax-collector, parish treasurer, and member of the school-board, all at one time, and fought like the devil to be appointed treasurer of the school-board.
Q. Through whose influence has he been able to hold all these offices?—A. Through the influence of his brother, Geo. C. Benham, as I believe.
Q. Is not Mr. R. M. Lackey a Republican?—A. Yes, sir.

Cross-examined by contestee:

Q. What is your occupation?—A. Keeper of a drinking-saloon.

Q. Did you not once support Mr. B. H. Lanier for office?—A. I did.

Q. At the last election were not Messrs. Moss, Lanier, and W. W. Benham members of the opposite faction of the Republican party to that to which you belonged?—A. They were.

Q. Was there a good deal of feeling between the two factions?—A. There was considerable feeling between the leaders of the factions.

Q. Did not each faction accuse the other of being bolters and disturbers of the party organization?—A. My side was the regular organization; the others were bolters.

Q. The returning-board, did it not declare that your opponents carried the parish?—A. It did.

Q. When did you come to Carroll Parish?—A. On the 14th of November, 1869.

Q. Were you not a candidate for office in 1872, and for what office?—A. I was a candidate for member of the house in 1872.

Q. Did you get your seat?—A. No.

Q. Did you get your seat in 1875?—A. I did not.

Q. Did the candidates of the opposite faction get their seats?—A. They did.

Q. Are you a colored man?—A. I have colored blood in me.

Q. Are Messrs. Moss, W. W. Benham, Dickey, and Lanier white?—A. I don't know; they are so classed.

Q. Did you or not recommend the removal of R. M. Lackey as supervisor of registration of this parish on account of unfitness?—A. I recommended his removal because I thought he was controlled by George C. Benham.

J. E. BURTON.

Sworn to and subscribed before me this 7th day of May, 1875.

S. DUNCAN GLENN,
*Notary Public.*

*Testimony of Thomas F. Montgomery.*

THOMAS F. MONTGOMERY, recalled and sworn for contestant, testifies as follows:

Question. In your testimony, heretofore given in this case, you state that you did not sign or swear to any of the returns and tally-sheets at poll No. 2, but that you only signed the list of persons who voted at said poll. W. W. Benham, in his testimony in this case, testifies that you did sign and swear to, with himself and S. L. Murray, the returns of said poll, as well as the list of persons voting. Is said Benham's statement true?—Answer. His statement is not true. The only paper that I signed, except my oath as commissioner, was the list of persons who voted at said poll.

70 Cross-examined by contestee:

Q. Are you acquainted with the members of the grand jury which served at the last term of the district court in the parish, in December last? And, if so, state how many were white, how many were colored, how many were Democrats, and how many were Republicans, so far as you know.—A. I was not a member of the grand jury myself, but I was in the court-house when the grand jury was drawn. I was acquainted with the foreman, Mr. Rhoten, Mr. Shelby, Mr. William Page, Paul Le Fevre. These were all white men, and the three first, I believe, were Democrats. The fourth, I don't know his politics. All the balance of the sixteen grand jurors were colored men, and I suppose Republicans. I don't recollect their names.

Q. Is or not Mr. Rhoten, who is the foreman of said grand jury, a large planter, and a leading and respected citizen of the parish?—A. He is a good citizen and large planter.

Re-examined by contestant:

Q. What is your occupation?—A. My profession is that of civil engineer, and am now a planter.

TOM F. MONTGOMERY.

Sworn to and subscribed before me this 6th day of May, 1875.

S. DUNCAN GLENN,
*Notary Public.*

X.—*Agreement as to votes cast in Lincoln Parish.*

W. B. SPENCER
*vs.*
F. MOREY.

The following supplemental agreement is made, to wit:

1st. It is agreed that Wm. B. Spencer's majority over Frank Morey for Congress, in the parish of Lincoln, was between three hundred and seventy-four and three hundred and ninety-one votes. The exact figure is given by the returns of the parish supervisor and commissioners of election for said parish, to which reference is here made. It is therefore agreed to dispense with any proof under the third clase of Spencer's notice of contest.

2d. Spencer, contestant, withdraws and annuls his fifth charge made in his notice afore said, and agrees that the same be held as of no effect, and Morey, contestee, also withdraws in same manner the charge in the third clause of his answer.

3d. We now close the evidence in this case with the testimony taken in Carroll, and will take no further evidence except it be so ordered by the House of Representatives.

WM. B. SPENCER.
FRANK MOREY.

PROVIDENCE, LA., *May* 8, 1875.

1 XX.—*Agreement as to notary's capacity, and admission of opinion of supreme court.*

WILLIAM B. SPENCER
*vs.*
FRANK MOREY.

In this case it is agreed:

1st. That the evidence in Carroll Parish has been taken by our mutual consent, by and before S. Duncan Glenn, notary public, and we dispense with proof of his authority.

2d. That a duly certified copy of the mandate and decree of the supreme court of Louisiana in the case of "Nicholas Burton *et als. vs.* Charles Hicks *et als.*" may be filed in this case at any time, if rendered. And that in making up the transcript of said suit of Burton *vs.* Hicks, copies of citations and subpœnas need not be made, and only one copy of each of two kinds of exceptions.

3d. That the laws and public acts of the United States Government, and of the State government of Louisiana, now or heretofore recognized by the Federal Government, may be read and used in this case in the same manner as though formally offered in evidence, previous notice of such State acts as either party may intend to read being given the opposite party at least ten days before he is called upon to reply, provided this is not inconsistent with the rules of the House and committee.

This 8th May, 1875.

WILLIAM B. SPENCER.
FRANK MOREY.

STATE OF LOUISIANA,
*Parish of Carroll:*

Be it known and remembered that, at the request of Wm. B. Spencer and Frank Morey, contestant and contestee, in the case of Wm. B. Spencer *vs.* Frank Morey, for seat in the Forty-fourth Congress, as Representative of the fifth district of Louisiana, I, S. Duncan Glenn, notary public in and for said parish, did cause to come before me the witnesses whose depositions are hereto prefixed and paged from 1 to 136; and that the documents referred to in said testimony and evidence, and offered in evidence, are hereto annexed, as well as the agreements of said parties, marked "X" and "XX." That this testimony and evidence was all taken in presence of the said parties and their counsel.

Witness my hand and seal at Providence, Carroll Parish, La., on this eighth day of May, A. D. 1875.

[SEAL.]

S. DUNCAN GLENN,
*Notary Public.*

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79 EXHIBIT D.—*Statement of votes at poll No. 1, parish of Carroll.*

Statement of votes cast at poll No. 1 of election precinct No. 1 of the parish of Carroll, for members of Congress, State and parish officers, at the general election, held November 2, 1874, in accordance with law.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 647 (six hundred and forty-seven). |
| J. C. Moncure | do | 21 (twenty-one). |
| Frank Morey | Congress, fifth district. | 645 (six hundred and forty-five). |
| W. B. Spencer | do | 23 (twenty-three). |
| George C. Benham | State senator | 638 (six hundred and thirty-eight). |
| Jacques A. Gla | do | 27 (twenty-seven). |
| J. Harvey Brigham | do | 3 (three). |
| Cain Sartain | Representative. | 468 (four hundred and sixty-eight). |
| P. Jones Yorke | do | 452 (four hundred and fifty-two). |
| J. Edwards Burton | do | 200 (two hundred). |
| Henry Adkins | do | 216 (two hundred and sixteen). |

EXHIBIT D.—Continued.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| M. Dubose | Parish judge | 202 (two hundred and two). |
| Charles E. Moss, jr | do | 464 (four hundred and sixty-four). |
| Charles Hicks | Sheriff | 467 (four hundred and sixty seven). |
| Nicholas Burton | do | 201 (two hundred and one). |
| Pompey Small | Coroner | 468 (four hundred and sixty-eight). |
| John H. Collins | do | 191 (one hundred and ninety-one). |
| Wilson Ferguson | Police juror | 466 (four hundred and sixty-six). |
| Charles H. Nash | do | 466 (four hundred and sixty-six). |
| Merritt Michell | do | 466 (four hundred and sixty-six). |
| W. H. Stroube | do | 467 (four hundred and sixty-seven). |
| C. M. Counts | do | 466 (four hundred and sixty-six). |
| David King | do | 201 (two hundred and one). |
| C. Ed. Shearer | do | 200 (two hundred). |
| Jack Snelling | do | 202 (two hundred and two). |
| Henry Price | do | 198 (one hundred and ninety-eight). |
| John Holloway | do | 202 (two hundred and two). |
| Raymond Gilbert | Magistrate | 481 (four hundred and eighty-one). |
| Peter Bax | do | 186 (one hundred and eighty-six). |
| Calvin Scott | do | 1 (one). |
| Joe Jackson | Constable, 1st ward | 162 (one hundred and sixty-two). |
| Mathew Page | do | 191 (one hundred and ninety-one). |
| Buck Prentier | do | 2 (two). |
| Proposed amendments to constitution, section 1st. | For approval | 662 (six hundred and sixty-two). |
| Do. 1st | Against | 6 (six). |
| Do. 2d | For | 662 (six hundred and sixty-two). |
| Do. do | Against | 6 (six). |
| Do. 3d | For | 662 (six hundred and sixty-two). |
| Do. do | Against | 6 (six). |
| Do. 4th | For | 662 (six hundred and sixty-two). |
| Do. do | Against | 6 (six). |
| Do. 5th | For | 662 (six hundred and sixty-two). |
| Do. do | Against | 6 (six). |
| J. Harvey Brigham | Representative | 1 (one). |

*Statement of votes*—Continued.

| No. of ballots in box. | No. of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| 668 (six hundred and sixty-eight). | | |

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before me, the undersigned authority, T. B. Rhodes, E. M. Spann, David Jackson, duly appointed and qualified commissioners of election of poll No
80 1, election precinct of the parish of Carroll, for the general election held November 2, 1874, who, being duly sworn, deposes and says that they received the ballots cast at the said poll on the day above mentioned; that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

T. B. RHODES,
E. M. SPANN,
DAVID JACKSON,
*Commissioners of Election, Poll No. —, Parish of ——.*

Sworn and subscribed to before me this 4th day of November, A. D. 1874.

S. T. AUSTIN, JR.,
*Justice of the Peace, Second Ward, Parish of Carroll, Louisiana.*

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,
*New Orleans, April* 13, 1875.

ereby certify that the foregoing is a true and correct extract from the original document e in this office.

:AL.] N. DURAND,
*Assistant Secretary of State.*

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EXHIBIT E.—*Statement of votes cast at poll No. 2, parish of Carroll.*

ment of votes cast at poll No. 2 of election precinct No. — of the parish of Carroll, for mbers of Congress, State and parish officers, at the general election held November 2, '4, in accordance with law.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| ine Dubuclet | State treasurer | 717 |
| Moncure | do | 53 |
| k Morey | Congress, 5th district | 719 |
| . Spencer | do | 49 |
| ge C. Benham | State senator, 17th district | 702 |
| nes A. Gla | do | 65 |
| arvey Brigham | do | 3 |
| Sartain | Representative | 698 |
| nes Yorkee | do | 692 |
| lward Burton | do | 57 |
| y Atkins | do | 59 |
| a Basa | Parish judge | 77 |
| les E. Moss, jr | do | 691 |
| les Hicks | Sheriff | 698 |
| olas Burton | do | 72 |
| pey Small | Coroner | 698 |
| H. Collins | do | 62 |
| on Ferguson | Police-juror | 698 |
| les H. Nash | do | 701 |
| et Mitchell | do | 698 |
| I. Straube | do | 700 |
| . Counts | do | 698 |
| d King | do | 64 |
| d Shearer | do | 62 |
| Snelling | do | 64 |
| y Prier | do | 64 |
| Halloway | do | 63 |

*Statement of votes*—Continued.

| No. of ballots in box. | No. of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| seven hundred and seventy) | None | |

STATE OF LOUISIANA, *Parish of* ——:

rsonally appeared before me, the undersigned authority, Thomas F. Montgomery, iel L. Murray, and W. W. Benham, duly appointed and qualified commissioners of ion of poll No. 2, election-precinct of the parish of Carroll, for the general election held mber 2, who, being duly sworn, deposes and says: That they received the ballots cast e said poll on the day above mentioned; that they have made a true and lawful count

of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

W. W. BENHAM,
TOM F. MONTGOMERY,
SAM. L. MURRAY,
*Commissioners of Election, Poll No. 2, Parish of Carroll, Louisiana.*

Sworn to and subscribed to before me this 4th day of November, A. D. 1874.

S. T. AUSTIN, JR.,
*Justice of the Peace, Second Ward, Parish of Carroll, Louisiana.*

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, April* 13, 1875.

I hereby certify that the foregoing is a true and correct extract from the original on file in this office.

[SEAL.]

N. DURAND,
*Assistant Secretary of State.*

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EXHIBIT F.—*Statement of votes cast at poll No. 3, parish of Carroll.*

Statement of votes cast at poll No. 3 of election-precinct No. 3 of the parish of Carroll, for members of Congress, State, and parish officers, at the general election held November 2, 1874, in accordance with law.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 558 |
| John C. Moncure | do | 3 |
| Frank Morey | Congress, 5th district | 554 |
| W. B. Spencer | do | 7 |
| Jacques R. Gla | State senator, 1st district | 60 |
| George C. Benham | do | 501 |
| J. Harvey Brigham | do | 2 |
| Cain Sartain | Representatives | 491 |
| P. Jones York | do | 498 |
| J. Edward Burton | do | 62 |
| Henry Atkins | do | 61 |
| M. Du Bose | Parish-judge | 60 |
| Charles E. Moss, jr | do | 498 |
| Charles Hicks | Sheriff | 498 |
| Nicholas Burton | do | 61 |
| Pompey Small | Coroner | 498 |
| John H. Collins | do | 60 |
| Wilson Ferguson | Police-jurors | 496 |
| Charles H. Nash | do | 499 |
| Merritt Michell | do | 498 |
| W. H. Stroube | do | 499 |
| C. M. Counts | do | 499 |
| David King | do | 61 |
| C. Ed. Shearer | do | 60 |
| Jacks Snelling | do | 61 |
| Henry Price | do | 59 |
| John Halloway | do | 59 |

82 *Statement of votes*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| 563 (five hundred and sixty-three). | None | |

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before me, the undersigned authority, R. M. Bagley, R. K. Anderson, Duf Anderson, duly appointed and qualified commissioners of election of poll No. 3, election-precinct of the parish of Carroll, for the general election held November 2, 1874, who, being duly sworn, deposes and says: That they received the ballots cast at the said poll on the day above mentioned; that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

Sworn and subscribed to before me this 3d day of November, A. D. 1874.

R. M. BAGLEY,
R. K. ANDERSON,
DUF ANDERSON,
*Commissioners of Election, Poll No. 3, Parish of Carroll.*

Sworn and subscribed to before me this 3d day of November, A. D. 1874.

S. T. AUSTIN, JR.,
*Justice of the Peace, Second Ward, Parish of Carroll, La.*

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, April* 13, 1875.

I hereby certify that the foregoing is a true and correct extract from the original document on file in this office.

[SEAL.]

N. DURAND,
*Assistant Secretary of State.*

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EXHIBIT G.—*Statement of votes cast at poll No.* 4, *parish of Carroll.*

Statement of votes cast at poll No. — of election-precinct No. — of the parish of Carroll, for members of Congress, State, and parish officers, at the general election, held November 2, 1874, in accordance with law.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 189 (one hundred and eighty-nine). |
| J. C. Moncure | do | 52 (fifty-two). |
| Frank Murrey | For Congress | 167 (one hundred and sixty-seven). |
| W. B. Spencer | do | 74 (seventy-four). |
| George C. Benham | For state senate | 156 (one hundred and fifty-six). |
| Jacques A. Gla | do | 23 (twenty-three). |
| Harvey Brigham | do | 60 (sixty). |
| ——— Brigham | do | 2 (two). |
| Cain Sartain | For house representatives | 124 (one hundred and twenty-four). |
| T. Jones York | do | 123 (one hundred and twenty-three). |
| J. Edward Berton | do | 79 (seventy-nine). |
| Henry Atkins | do | 69 (sixty-nine). |
| C. E. Moss, jr | Parish judge | 117 (one hundred and seventeen). |
| M. Dabose | do | 124 (one hundred and twenty-four). |

83 EXHIBIT G.—*Statement of votes cast at poll No.* 4, *parish of Carroll*—Continued.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Charles Hicks | Sheriff | 160 (one hundred and sixty). |
| Nicholas Borton | do | 67 (sixty-seven). |
| Pompey Small | Coroner | 124 (one hundred and twenty-four). |
| J. H. Collins | do | 72 (seventy-two). |
| Wilson Ferguson | Police jury | 128 (one hundred and twenty-eight). |
| Chas. H. Nash | do | 127 (one hundred and twenty-seven). |
| Merritt Mitchell | do | 129 (one hundred and twenty-nine). |
| W. H. Stroube | do | 143 (one hundred and forty-three). |
| C. M. Counts | do | 128 (one hundred and twenty-eight). |
| David King | do | 53 (fifty-three). |
| C. Ed. Shearer | do | 54 (fifty-four). |
| Jack Snelling | do | 50 (fifty). |
| Henry Price | do | 86 (eighty-six). |

*Statement of votes.*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| 241 (two hundred and forty-one.) | None | There was no intimidation or threats of any character. |

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before me, the undersigned authority, James S. Milliken, J. M. Gaddis, and George D. Price, duly appointed and qualified commissioners of election of poll No. —, election-precinct of the parish of ———, for the general election, held November 2, 1874, who, being duly sworn, deposes and says: That they received the ballots cast at the said poll on the day above mentioned; that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

J. S. MILLIKEN,
G. D. PRICE,
J. M. GADDIS,
*Commissioners of Election, Poll No. 4, Parish of Carroll.*

Sworn and subscribed to before me this 3d day of November, A. D. 1874.

MERRILL JACKSON, *J. P.*

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, April* 13, 1875.

I hereby certify that the above and foregoing is a true and correct extract from the original document on file in this office.

[SEAL.]

D. DURAND,
*Assistant Secretary of State.*

EXHIBIT H.—*Statement of votes cast at poll No. 5, parish of Carroll.*

Statement of votes cast at poll No. 5, of election-precinct No. 5, of the parish of Carroll, for members of Congress, State, and parish officers, at the general election held November 2, 1874, in accordance with law.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 91 |
| John C. Moncure | do | 106 |
| Frank Morey | Congress, 5th district | 96 |
| W. B. Spencer | do | 108 |
| First amendment to constitution | For approval | 97 |
| Do | Against | 101 |
| Second amendment to constitution | For | 97 |
| Do | Against | 101 |
| Third amendment to constitution | For | 97 |
| Do | Against | 101 |
| Fourth amendment to constitution | For | 97 |
| Do | Against | 101 |
| Fifth amendment to constitution | For | 97 |
| Do | Against | 101 |
| George C. Benham | Senator 17th district | 72 |
| J. Harvey Brigham | do | 23 |
| Jacques A. Gla | do | 121 |
| Cain Sartain | Representative | 36 |
| P. Jones York | do | 65 |
| J. Edward Burton | do | 130 |
| Henry Atkins | do | 127 |
| Charles E. Moss, jr | Parish judge | 49 |
| M. Du Bosa | do | 161 |
| Charles Hicks | Sheriff | 42 |
| Nicholas Burton | do | 151 |
| Pompey Small | Coroner | 45 |
| John H. Collins | do | 128 |

*Statement of votes*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| (216) two hundred and sixteen.... | Not any. | |

STATE OF LOUISIANA,
*Parish of Carroll:*

Personally appeared before me, the undersigned authority, V. H. Tillory, C. A. Lehman, W. S. Orsburn, duly appointed and qualified commissioners of election of poll No. 5, election-precinct of the parish of Carroll, for the general election held November 2, 1874, who, being duly sworn, depose and say: That they received the ballots cast at the said poll on the day above mentioned; that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

Sworn and subscribed to before me this 4th day of November, A. D. 1874.

V. H. TILLORY,
C. A. LEHMAN,
W. J. ORSBURN,
*Commissioners of Election Poll No. 5, Parish of Carroll.*

Sworn and subscribed to before me this 4th day of November, A. D. 1874.

S. T. AUSTIN, JR.,
*Justice of the Peace, Second Ward, Parish of Carroll, La.*

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, April* 13, 1875.

I hereby certify that the foregoing is a true and correct extract from the original document on file in this office.

[SEAL.]

N. DURAND,
*Assistant Secretary of State.*

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EXHIBIT J.—*Protest of O. Arroyo, No.* 1.

[From the N. O. Picayune, Dec. 19, 1875.]

The following protest will to-day be entered by Mr. Arroyo against the action of the board in the Carroll Parish contest:

The undersigned, a member of the returning-board, protests against the decision of the board in canvassing and compiling the returns of the parish of Carroll, for the following reasons, to wit: Because, according to said report and tally-sheets made by the commissioners of election at the different polls of said parish, the following parties appear to have received the following vote, viz: At poll 1, Antoine Dubuclet, candidate for State treasurer, received 647 votes, J. C. Moncure, 21; Frank Morey, for Congress, received 645 votes, and W. B. Spencer 28; for State senator Geo. C. Benham received 638 votes, and J. A. Gla 196, J. H. Brigham 7; while E M. Spann, Democratic commissioner of election at said poll, swears that A. Dubuclet received 580 votes, J. C. Moncure 21, F. Morey 569, W. B. Spencer 43, Geo. C. Benham 394, J. A. Gla 196, J. H. Brigham 7; and that any other return purporting to have been made by him (Spann) is false, and his signature thereto is a forgery. At poll 2, for State treasurer, A. Dubuclet received 717 votes, J. C. Moncure 53; for Congress, F. Morey received 719 votes, W. B. Spencer 49; for State senate, Geo. C. Benham received 702 votes, J. A. Gla 65, and J. H. Brigham 3; while T. F. Montgomery, the Democratic commissioner of election at said poll, swears that Geo. C. Benham received 427, J. A. Gla 282, and J. H. Brigham 3; and that any other return purporting to be made by him (Montgomery) is false, and the signature thereof is a forgery.

At poll 4, for State treasurer, A. Dubuclet received 558 votes, J. C. Moncure 3; for Congress, F. Morey received 554 votes, and W. B. Spencer 7; for senator, George C. Benham received 501, J. A. Gla 60, and J. H. Brigham 1; while R. M. Bagley, Democratic commissioner of election at said poll, swears that Antoine Dubuclet received 514 votes, J. C. Moncure 3 votes; Frank Morey, for Congress, received 510 votes, W. B. Spencer 7 votes, George C. Benham, 350 votes, J. A. Gla 164, and J. H. Brigham 1 vote. Being present in the returning-board when the returns were canvassed, he, the said Bagley, pronounced the return false, his signature thereto a forgery, and the tally-sheets accompanying the same as spurious and false; for the tally-sheet that was kept by the commissioners and adopted by them was the one which he, the said Bagley, wrote, and that was in red ink, whereas the one before the returning-board is in black ink.

At poll 4, Antoine Dubuclet received 189 votes, J. C. Moncure 52; for Congress, Frank Morey 167 votes, W. B. Spencer 74; for senator, Geo. C. Benham 156 votes, J. A. Gla 23,

J. H. Brigham 60; while J. S. Milliken, the Democratic commissioner of election at that poll, swears that at that poll A. Dubuclet received 155 votes, J. C. Moncure 65, F. Morey 156, W. B. Spencer 64, George C. Benham 111, J. A. Gla 56, and J. H. Brigham 60; and that any other return purporting to have been served by him (Milliken) is false, and his signature a forgery.

At poll 5, for State treasurer, A. Dubuclet received 91 votes, J. C. Moncure 106; for Congress, F. Morey received 96 votes, W. B. Spencer 108; for State senate, Geo. C. Benham 72, J. A. Gla 121, and J. H. Brigham 23; while by the testimony of T. P. McCandles, Democratic commissioner at said poll, A. Dubuclet received 91 votes, J. C. Moncure 106, F. Morey 96, W. B. Spencer 108, G. C. Benham 41, J. A. Gla 129, and J. H. Brigham 33; and said McCandles swears that any returns purporting to be signed by him, showing a different result, is false, and his signature is a forgery. Because it is proven by the testimony of T. F. Montgomery, district attorney of Carroll, Blunt, United States supervisor of said parish, and others, that the clerk of the district court of that parish has unlawfully refused them re-examination of said election returns, and that the defeated candidates for parish officers in said parish have been denied by said clerk the right to examine the duplicate returns, which, by law, make part of the records of his office. Finally, because it is in evidence that at poll 2 Geo. C. Benham, the Republican candidate for the senate, did, on the election-day, by unlawful and violent conduct, intimidate the colored voters of said parish, and thereby wrongfully and fraudulently procure a more numerous vo'e than was truly cast for him, by unlawfully threatening the said colored voters as they approached to vote, and brutally snatching from their hands the tickets which they held in their hands, and which they were about to deposit in the ballot-box, and forcing upon them other ballots with which he had provided himself for that purpose, and that the said Benham persisted in this course of conduct, contrary to the freedom guaranteed the people at their election, throughout the entire day of election, for the purpose of securing his return as State senator, and the success of the Republican party of Carroll Parish.

Because it is in evidence that at poll No. 1, in said parish, the voters had to place their ballots on the end of poles or canes, in order to reach the hands of the commissioners of election, who were seated in a room elevated from the ground, so that the voters were denied the privilege of having their ballots placed in the ballot-box. From these facts it is evident that, first, there has been no fair expression of the votes of the parish of Carroll;
86 second, that we have no returns even of the votes actually cast; what purport to be returns being proved to be fraudulent and forgeries, and there is no evidence required by law to show what the vote of November 2 really was. The vote of the parish ought not to be taken into consideration by us, as it does not represent the true will of the people of the parish, and affects the vote of the other parishes in that senatorial district and the rest of the State on the question of treasurer. It should, therefore, be rejected. By an agreement on the board, the question, as one of law, was to be referred to two lawyers, to be selected by the board, one to be chosen from the Democratic party by the remainder of the board, and one from the Republican party, to be chosen by myself. I selected Judge Dooley, candidate for judgeship of the first district court in 1872 on the Republican ticket, and a lawyer of erudition and long practice, whose views, presented herewith, fully confirm my position on this question. The board has not yet produced an opinion from a Democratic lawyer to the contrary. Well convinced that the rights of the people of the parish of Carroll and of that of the people of the whole State have been outraged and trampled upon by unworthy and criminal agents—in a word, with unscrupulous and reckless partisans, the undersigned hereby solemnly protests against compiling and canvassing, as genuine, the fraudulent returns above set forth.

LOCAL OPINION.

The following opinions, addressed to Mr. Arroyo from Mr. M. A. Dooley, upon the duties of returning-officers, in relation to returns wherein forgery has been proved, and also with respect to the power and obligation of the board to send for persons and papers under such circumstances, will be found pertinent and interesting now, inasmuch as the board has failed to perform its duty in this regard:

NEW ORLEANS, *December* 17, 1874.

OSCAR ARROYO, Esq., *Returning-Officer:*

DEAR SIR: With regard to the question which you propounded to me as to the duty and power of your board in cases where it has been brought to your knowledge that fraud, forgery, and perjury have been committed in returns of election, "materially changing the result of such election," I am clearly of the opinion that it is within your power and it is your duty "to examine further testimony," (than such returns,) and to this end you have "power to send for persons and papers," and upon such investigation to give effect to the honest votes cast. Or else, if you find the corrupt influences did materially change the result of the election, you should not canvass or compile the statement, but exclude the returns.

Respectfully,

M. A. DOOLEY.

NEW ORLEANS, *December* 17, 1864.

OSCAR ARROYO, Esq., *Returning-Officer:*

You know the opinion which I sent you this morning was given on very short notice, without time for reflection or examination. I wish to add to it by calling your attention to the oath each member of your board has taken, to wit: "I do solemnly swear that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God."

It is unnecessary for me to suggest to a gentleman of your intelligence what the signification of the word "canvass" means. A reference to any standard dictionary determines it. How gentlemen placed in your official position could conscientiously conform to your said oath of office, and carefully and honestly canvass and compile the statements of votes, and make a true and correct return of the election, and yet sanction and give effect to a forged and fraudulent return, is, to me, incomprehensible. A forged and fraudulent return is no return at all, any more than a forged bank-note is a bank-note. We know how a man is esteemed and dealt with by the law, who knowingly palms off a forged bank-note; and we likewise know that it is true in morals as in law, that no man can sanction and give effect by his act to forgery and fraud without being *particeps criminis*.

Respectfully,

M. A. DOOLEY.

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EXHIBIT K.—*Reply of Wells to protest of Arroyo, No.* 1

[From the New Orleans Republican, December 20, 1874.]

THE RETURNING-BOARD.

There was little or nothing done by this body yesterday, excepting what was ac-
87 complished in executive session. The board met as usual, and after adopting the minutes of the previous day went into secret session, during which time the contests in the parishes of Red River, Natchitoches, and Avoyelles were settled and the returns of those parishes ordered to be compiled.

The board adjourned to meet again to-morrow at 11 o'clock.

Governor Wells yesterday submitted the following reply to the protest of Mr. Arroyo:

Hon. Oscar Arroyo, a member of the board, has entered a protest against the decision of the board in the Carroll Parish case, which the majority of the board do not think gives a full statement of the case, and it omits to give the grounds on which it was decided; consequently we deem it our duty to place our decision and the reasons for it properly on record.

The supervisor of registration returned a statement of the votes and the tally-sheets from the several polls in this parish to this board, in proper legal form, when they were opened by the board and examined. Mr. Gla, a Republican candidate for the senate, and the attorneys for the Democratic party, entered for objection to the returns substantially two reasons:

1. That the election in this parish was not fair, free, and peaceable; that the voters had been intimidated, and forced to vote contrary to their wish.

2. That the returns of the commissioners from the several polls made by the supervisor to this board were forgeries, or had been changed.

Much evidence, in the shape of affidavits, was filed in the case by the parties in interest.

A careful examination of the evidence on both sides satisfied us that the election was fair, free, and peaceable, and that on the day of election there was nothing unusual that affected the voters at any of the polls. It is true there was some such evidence as that alluded to by Mr. Arroyo, at poll No. 1, where it is charged that Benham, one of the candidates for the senate, intimidated voters, and caused them thereby to vote for him. It is proved that Benham did procure colored voters to change their ballots, but there is no such evidence as will justify the conclusion that he exercised any violence or threats to induce them to do so.

At poll No. 2, it is charged that the ballot-box was made so inaccessible that ballots had to be put on the ends of canes to hand them up to the commissioners; this evidence is not sustained by the commissioners; even Mr Shaw, the Democratic commissioner at this box, does not corroborate this statement; but even if it were so, as commissioners of both political parties presided at this poll, and there is no proof that the ballots actually voted were not put in the box, it cannot invalidate the election.

The whole evidence satisfies us that up to and on the day of election there was no intimidation or other unlawful act that should invalidate the election at any poll in this parish, but that the election was as fair, free, and peaceable as usual, and that the voters very generally exercised their right to vote. There were 2,530 voters registered, and 2,263 voted. In fact, it is not attempted to be proved that any one was prevented from voting from any unlawful cause.

It is clear that all was fair, free, and peaceable up to the close of the election in this parish. If anything transpired to deprive the voters of this parish from having their votes

properly returned, and compiled, it was after the election; and under the law it is the duty of this board, and it has the power, to inquire into any such fraud, and, if found to exist, to ascertain the facts and make the proper correction and compilation. This the board proceeded to do. In the absence of intimidation or other acts that would improperly influence the election on or before the day of election, the law authorizes us to take evidence and even send for persons and papers where corrupt influences have been used to offset the election. Fraudulent changing the commissioners' return comes under this head. Now, in canvassing the returns under this authority, it is the duty of the board to ascertain the true state of the vote, and to so compile it; not to reject it altogether, as Mr. Arroyo contends in his protest. If the returns should be found to have been changed, they are to be corrected so as to show the true state of the case, and not be altogether rejected.

The main contest in this case was between Mr. Benham and Mr. Gla, both Republican candidates for the Senate, and both claiming to be regularly nominated. There was also a Democratic candidate for the senate, Mr. Brigham.

There is no evidence that the return from poll 5 had been, in any particular, changed.

There is no evidence there was any changing of the returns of the commissioners from poll 2, except as to Benham and Gla.

The evidence shows that the returns of the commissioners of election from polls 1, 3, and 4 had been changed as to the candidates for treasurer, Congress, and senate, and the real number of votes received by each candidate are detailed in the evidence, but the change in the number of votes for treasurer and Congress is too small to offset the result of the election for either of these offices.

88 The evidence satisfies the majority of the board that the appended affidavit of Mr. Blount, United States supervisor of election for that parish, appointed on the recommendation of the Democratic party, gives the true state of the vote between Mr. Benham and Mr. Gla. This testimony is supported by the Democratic commissioners at these three boxes, which stand as follows:

| | Benham. | Gla. |
|---|---|---|
| Poll 1 | 394 | 196 |
| Poll 2 | 427 | 282 |
| Poll 3 | 360 | 164 |
| Poll 4 | 114 | 56 |
| Poll 5 | 43 | 129 |
| Total | 1,338 | 827 |

We predicate this altogether on the testimony from Democratic sources.

The evidence does not satisfy us that the commissioners' returns are forgeries, but that they have been changed in the above particulars.

It has been our purpose in this investigation to give the voters in Carroll Parish the real benefit of their votes, honestly, and without fraud or intimidation, cast at the election.

Our colleague, Mr. Arroyo, has, in his protest in this case, departed from the equitable and just rule that ought to govern in such cases in insisting in throwing out the entire vote of this parish, thereby depriving the voters of their inestimable privilege when they are in no manner at fault, the effect of which would be the counting in a number of his party friends, and deprives him of that high position he has assumed throughout of being altogether impartial.

J. MADISON WELLS,
*President Returning-Board.*

STATE OF LOUISIANA, *Parish of Carroll:*

Before me, the undersigned authority, personally came and appeared W. A. Blount, United States supervisor of registration and election in and for the parish of Carroll, duly appointed, commissioned, and sworn, by the United States circuit judge, Hon. W. B. Woods, and the said Blount, being duly sworn by me, declared and said that the registration of the parish of Carroll closed on Friday evening, October 23, 1874, R. M. Lackey, supervisor, W. W. Benham and James Mulligan, clerks; and that the total registration of the said parish was as shown on the registration-books, 2,530 names; that on the second day of November, 1874 the vote cast in the said parish of Carroll for State senator was 2,263, being 265 less than the actual registration. and that vote so cast was for the persons named as follows: George C. Benham, 1,348; J. A. Gla, 827; J. H. Brigham, 98; giving George C. Benham a majority of 509 votes in the parish of Carroll over J. A. Gla; that I have this knowledge from a personal inspection of the tally-sheets of the first, second, and fifth wards, and that my knowledge of the vote of the third and fourth wards is received from the commissioners of election and deputy United States supervisors stationed at those wards on the day of election. And this appearer further swears that he was present in person at the second ward in said parish in his capacity of United States supervisor of election, and that after the count of the votes was made in said ward, and the tally-sheets folded up on Tuesday evening, November 3, 1874, the said tally-sheets were not signed at as late as ten o'clock on said evening, being twenty-eight hours, at least, after the closing of the polls. *and that the* said tally-sheets and ballot-box were carried away from the voting place with-

out being signed by the commissioners of election; that W. W. Benham had the said tally-sheets and ballot box in possession when last seen by this appearer; and that this appearer has repeatedly been refused permission to examine said tally-sheets after they were conveyed away from the voting-place when he applied to Mr. Lackey, and W. W. Benham, clerk, to examine them in his capacity of United States supervisor of registration and election for the said parish of Carroll; and that the said tally-sheets were conveyed away from the said parish without having been examined by this appearer after compilation.

That no duplicates of said tally-sheets can be found by me in said parish after repeated application at the office of the clerk of the court for transcripts from them.

That this appearer verily believes that an evasion of the election-laws of this State is being consummated in the improper and illegal control of the election-returns of the parish of Carroll by R. M. Lackey, supervisor, and W. W. Benham, his clerk.

W. A. BLOUNT,
*United States Supervisor of Registration and Election for the Parish of Carroll.*

Sworn to and subscribed before me on this 26th day of November, 1874.
S. D. OLIVER, *Deputy Clerk.*

92 EXHIBIT N.—*Statement of returning-board of its action.*

[From the New Orleans Republican, December 25, 1874.]

The following statement of the action of the board was submitted at the conclusion of its labors:

In closing the labor of canvassing and compiling the vote of the State given at the election on the 2d of November last, it is but just and proper that the returning officers should give a statement of the difficulties attendant on their labors, and the principles laid down, drawn from the law, to direct them in the discharge of their duties.

In the first place, this election was very loosely conducted by the commissioners of election; so much so, that at not one-tenth of the polls in the State were the forms required by law observed.

The law requires the supervisors of registration to forward to the returning officers, first, the list of votes kept by the commissioners of election; second, the statement of the persons voted for, and the number of votes received by each; and, third, the tally-sheets; all of which the commissioners of election are required to furnish the supervisors, and they to forward to the returning officers.

In many cases no lists of voters are kept by the commissioners, or if there was they were not forwarded to the returning-board by the supervisors; and many that were forwarded to the returning-board were not signed or sworn to, as the law requires. In many cases there was no statement of the persons voted for and the number of votes received by them forwarded to the returning-board, for the reason that none were furnished by the commissioners of election to the supervisors, and many that were returned were neither signed nor sworn to, and in many cases there were no tally-sheets forwarded to the returning-board to enable them to test the accuracy of the statement of votes, and in some instances only the tally-sheets were returned to the returning-board, without the list of voters or the statement of votes, and they not signed or sworn to as the law requires. This being the case, it became necessary that the papers received from the polling-places should be carefully examined. There were over 650 polling-places in the State, and there was a long list of candidates. So it became a very laborious duty, which occupied the board nearly a month, laboring from 11 a. m. to 4 p. m., and from 7 to 11 p. m., every day.

The law requires "That in such canvass and compilation the returning-officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting-place there has been any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning-officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning-officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll and voting-place."

93 The board has followed this requirement of the law, as it was their imperative duty to do, and in examining the proceedings of the commissioners of election forwarded to it by the supervisors, when either of the counsel appointed by the political parties objected to the count of any poll, and laid before the board any evidence to sustain such objections, such polls were passed over and not canvassed until the board had compiled the votes from all polls not objected to.

In the progress of the examination a large number of polls were objected to, including some in twenty-seven of the parishes, and all in some. The grounds of objection to some of the polls were the failure of a substantial compliance with the law in conducting the election and making returns to the supervisors; to some, that the returns of the commissioners had been changed after they had been made to the supervisors; and to the fact

greater number, that the voters had been intimidated, so that they did not register or vote or were compelled to vote differently from what they desired.

Had the board decided that anything like a strict compliance with the forms of law in holding the election and making the returns to the supervisor would be required, the effect would have been that so many of the polls would have been thrown out that there would have been no election in the State. The board then adopted the rule that when the supervisor had returned any evidence showing an election was held, although it be only a tally-sheet unsigned or sworn to, that, in the absence of any evidence of fraud or intimidation, it would compile the vote as shown by such evidence or document. If it may be called evidence, this decision disposed of a good many protests to the reception of the polls, but when the sustantial forms of law had not been observed, and evidence of fraud or intimidation was produced, the failure of the substantial compliance with the forms of law was considered a badge of fraud, and the poll was rejected. We believed this to be a just and reasonable rule, and the board strictly adhered to it.

In the cases of Carroll, Saint Helena, and Saint James Parishes, where it was charged and proved the returns made by the commissioners to the supervisors had been changed after they came into the hands of the supervisors, the board took evidence to ascertain the true state of the vote, and made the compilation accordingly.

The question raised against the greater number of polls was the charge of intimidation to prevent voters from voting, and forcing them to vote against their wishes. To establish this charge a great mass of affidavits was taken, some applicable to whole parishes and some to particular polls, and a mass of counter-affidavits was also filed.

The general facts proved on this point establish that about May, 1874, a military organization known as the White League was established in this State, which extended to every parish of the State, and permeated every neighborhood: that the object of this organization was to prevent colored men from voting, unless they could be controlled to vote the Democratic ticket, and to prevent them from holding office; and further, to compel the Republicans holding office under the present State government to abdicate their offices, and to prevent the Republican party in this State from organizing, with a view of concentrating their party at the late election, and to expel the white Republicans from the State unless they would desist from organizing the Republican party in this State and withdraw from the active support of that party.

The means taken by this White-League organization to accomplish the above purposes are shown to have been by threats that if the colored voters did not vote the Democratic ticket they should be expelled from the plantations on which they were farming; be deprived of their crops; be excluded from renting lands hereafter, or of being employed, and deprived of rations or credit to obtain them; and the leading colored men were threatened with death if they persisted in organising the Republican party, and white Republicans were threatened with personal violence, proscription in business and socially of themselves and families, and with hanging, if they persisted in organising the party with a view to the late elections.

The organization, in armed bands, in many parishes in the State carried their threats of personal violence into effect by killing some Republicans, whipping and ill-treating others, and compelling the parish officers, holding office under the present State government, to abdicate their offices. This was particularly the case in all the Red River parishes, most of the Teche parishes, and in the parishes between the Red and Ouachita Rivers.

All the above acts, resorted to by this White-League organization to carry out their purpose, were clear violations of both the State and United States laws, and would subject the perpetrators of those acts to imprisonment in the penitentiary, so odious are they to the sense of the people of the country.

The evidence of such acts of intimidation, which prevented a fair, free, and peaceable election in the parishes of Saint Martin and Grant, was so general and overwhelming that the board felt compelled to throw out every box in these parishes; and in many other parishes where there was satisfactory proof that intimidation had been used at designated polls so as to prevent a fair, free, and peaceable election at such polls, they were excluded from the compilation, as the law requires.

When the friends of a political party—such as the White-League organization is
94 toward the Democratic party—shall so clearly and generally violate the laws of the country to control an election in their interests, it is but just and proper that when they are shown to have brought such acts to bear on an election, that they should not be permitted to profit by it, and such is the intention of the law. The board, however, in this case did not exclude any poll from the compilation except on satisfactory proof that such violation of law had been perpetrated, and that it had the effect of intimidating a sufficient number of voters to change the result of the election.

As all these acts to produce intimidation had been perpetrated in favor of the Democratic party and against the Republican party, the polls excluded from the compilation generally gave majorities in favor of the Democratic party, and their exclusion from the compilation reduced the vote of that party, and in some instances had the effect of returning representatives and other officers of the opposite party different from the returns made by the supervisors. This is the natural result of an illegal attempt to accomplish an object, and is no *fault of the* board.

The counsel of the Democratic party protested against the counting of certain polls in the parishes of Natchitoches and Bossier, on the grounds that the United States troops were expected at the polls on the day of election, or did actually visit the polls on the day of election, in order to assist the United States marshal to arrest persons charged with violations of the United States laws, and that in consequence a great number of Democrats did not attend the polls and vote for fear of arrest by the United States troops. Even if such facts had been fully proved, as alleged, we do not see that there was any violation of law in the United States troops doing so. Certainly a person charged with a crime against the United States law cannot say he is intimidated by the fact that the marshal, with the United States troops, is trying to arrest him. It is his own fault if he is guilty, and he cannot urge his own crime as his protection, and certainly persons not conscious of their guilt would not flee from the presence of the United States marshal and his posse of United States soldiers. This is preposterous, and we did not consider this a good ground of intimidation.

There were no returns of election from the parish of De Soto made by the supervisor of registration as the law required. Persons interested produced the clerk of the court, with such papers as by law were intrusted to him, and offered them as the returns from the parish. The board decided they could not receive and canvass and compile such returns. The parties in interest applied to the proper court for a mandamus to compel the board to receive, canvass, and compile those returns, but upon trial the court sustained the ruling of the board. The same principle was acted on in the Terre Bonne case.

There was no supervisor in the parish of Winn, the one appointed for that parish having been expelled from the parish and an unauthorized person assumed to act. The board could not recognize such lawlessness.

The board submits to the legislature and the people of this State the result of their investigation with a consciousness that they have properly discharged their trust.

J. MADISON WELLS,
*President.*

NEW ORLEANS, *December* 24, 1874.

The board adjourned subject to the call of the president.

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EXHIBIT P.—*Compiled returns of fifth Congressional district.*

OFFICIAL.

Compiled returns of an election held in the fifth Congressional district, State of Louisiana, under a writ of election dated September 10, 1874, on the second day of November, A. D. 1874, ordering same, and pursuant to the provisions of act No. 98, to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning-officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article one hundred and three of the constitution, approved November 20, A. D. 1872, to wit:

FIFTH CONGRESSIONAL DISTRICT.

| Parishes. | Frank Morey. | W. B. Spencer. |
|---|---|---|
| Concordia | 1,601 | 489 |
| Franklin | 80 | 485 |
| Tensas | 1,097 | 1,851 |
| Madison | 1,319 | 759 |
| Richland | 441 | 734 |
| Ouachita | 1 702 | 759 |
| Jackson | 94 | 534 |
| Lincoln | 514 | 590 |
| Union | 439 | 1,155 |
| Morehouse | 1,005 | 668 |
| Claiborne | 663 | 1,375 |
| Calahoula | 742 | 838 |
| Carroll | 2,181 | 261 |
| Caldwell | 401 | 540 |
| Total | 12,279 | 11,038 |

We, the undersigned returning-officers, pursuant to authority vested in us by act No. 99, approved November 20, 1872, do hereby certify the foregoing is a true and correct compilation of the statement of votes cast at an election for members of Congress held on the 2d day of November, A. D. 1874, under a writ of election promulgated September, 10, A. D. 1874, ordering same, and we hereby declare that the following-named person was duly and lawfully elected, to wit:

For member of Congress, fifth Congressional district, Frank Morey.

J. MADISON WELLS.
THOMAS C. ANDERSON.
G. CASANAVE.
LOUIS M. KENNER.

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EXHIBIT R.—*Extracts from platform of Democracy.*

That W. P. Kellogg is a mere usurper, and we denounce him as such: that his government is arbitrary, unjust, and oppressive, and that it can maintain itself only through Federal interference; that the election and registration laws under which this election is being conducted were intended to perpetuate the usurpation by depriving the people, and especially our naturalized citizens, of an opportunity to register and vote; but we announce distinctly that it is the determination of the people to have a fair and free election, and to see that the result is not changed by fraud or violence.

That we extend to all of our race, in every clime, the right hand of fellowship, and a cordial invitation to come and settle among us and unite their destinies with ours. That while we are in favor of meeting punctually the payment of the legitimate debt of Louisiana, we are immovably opposed to the recognition of the dishonest and fraudulent obligations issued in the name of the State, and we pledge ourselves to make a searching investigation in the matter.

We advise our people to vote against the amendments to the constitution proposed by the usurping legislature, and pledge ourselves, on the restoration of the government to honest hands, to provide for the payment of all honest indebtedness of the State.

EXHIBIT S.—*Comparative statement of registration and election in* 1872 *and* 1874.

| Parishes. | Registration of 1874. | | Votes of 1874. | | Registration of 1872. | | Votes of 1872, Lynch returns. | | Votes of 1872, Forman returns. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | White. | Colored. | Democratic. | Republican. | White. | Colored. | Democratic. | Republican. | Democratic. | Republican. |
| Ascension | 984 | 2,073 | 859 | 1,950 | 1,148 | 3,296 | 666 | 1,840 | 666 | 1,840 |
| Assumption | 1,693 | 1,800 | 1,498 | 1,539 | 2,207 | 2,176 | 1,276 | 1,912 | 1,730 | 1,463 |
| Avoyelles | 1,508 | 1,520 | 1,363 | 1,426 | 2,139 | 2,188 | 1,286 | 1,885 | 1,813 | 1,360 |
| Baton Rouge, East | 1,595 | 2,879 | 1,556 | 2,546 | 1,489 | 1,559 | 917 | 2,459 | 1,644 | 1,166 |
| Baton Rouge, West | 353 | 875 | 313 | 805 | 397 | 859 | 267 | 900 | 732 | 455 |
| Bossier | 622 | 1,753 | 1,020 | 1,077 | 587 | 1,795 | ..... | 1,159 | 953 | 555 |
| Bienville | 784 | 442 | 788 | ..... | 916 | 715 | 872 | 428 | 959 | 424 |
| Caddo | 1,724 | 2,950 | 1,211 | 1,343 | 1,549 | 3,134 | 627 | 1,238 | 1,817 | 1,576 |
| Calcasieu | 1,173 | 245 | 1,172 | 6 | 702 | 166 | 548 | 96 | 610 | 64 |
| Caldwell | 556 | 460 | 541 | 400 | 541 | 586 | 486 | 369 | 486 | 369 |
| Cameron | 275 | 48 | 203 | 47 | 263 | 31 | 176 | 40 | 176 | 40 |
| Carroll | 444 | 2,086 | 235 | 2,202 | 572 | 2,073 | 382 | 1,452 | 388 | 1,477 |
| Claiborne | 1,316 | 1,009 | 1,374 | 659 | 1,373 | 1,293 | 1,357 | 942 | 1,357 | 980 |
| Catahoula | 965 | 805 | 840 | 736 | 1,065 | 992 | 678 | 878 | 382 | 714 |
| Concordia | 176 | 2,377 | 154 | 2,043 | 307 | 2,577 | 186 | 1,671 | 165 | 1,634 |
| De Soto | 1,024 | 1,036 | ..... | ..... | 1,004 | 1,403 | 790 | 1,022 | 1,450 | 444 |
| Feliciana, East | 855 | 1,891 | 847 | 1,688 | 1,100 | 2,351 | 653 | 1,619 | 653 | 1,690 |
| Feliciana, West | 439 | 1,624 | 501 | 1,358 | 521 | 2,084 | 273 | 1,309 | 390 | 1,477 |
| Franklin | 445 | 270 | 457 | 114 | 522 | 507 | 535 | 268 | 543 | 269 |
| Grant | 453 | 444 | ..... | ..... | 616 | 733 | 165 | 779 | 514 | 405 |
| Iberia | 1,226 | 1,363 | 939 | 923 | 1,140 | 1,241 | 616 | 965 | (*) | (*) |
| Iberville | 805 | 2,343 | 770 | 2,167 | 740 | 3,296 | 691 | 2,239 | (*) | (*) |
| Jefferson, L. B | 159 | 730 | 169 | 639 | } 1,396 | 2,866 | 970 | 1,732 | 962 | 1,738 |
| Jefferson, R. B | 556 | 1,221 | 575 | 1,011 | | | | | | |
| Jackson | 453 | 274 | 261 | 37 | 1,101 | 822 | 446 | 610 | 312 | 502 |
| La Fayette | 1,003 | 730 | 976 | 530 | 1,115 | 897 | 884 | 482 | 892 | 482 |
| Livingston | 783 | 158 | 684 | 105 | (†) | (†) | 553 | 146 | 543 | 139 |
| La Fourche | 2,026 | 1,873 | 1,905 | 1,846 | 2,407 | 4,709 | 1,697 | 1,792 | 1,773 | 1,696 |
| Lincoln | 935 | 707 | 592 | 517 | ..... | ..... | ..... | ..... | ..... | ..... |
| Madison | 255 | 2,135 | 233 | 1,847 | 2,007 | 3,725 | 305 | 1,756 | 638 | 1,227 |
| Morehouse | 660 | 1,221 | 654 | 1,017 | 1,339 | 2,035 | 625 | 1,262 | 673 | 665 |

* Polls excluded. † No reports received or known to exist.

EXHIBIT 8—Continued.

| Parishes. | Registration of 1874. | | Votes of 1874. | | Registration of 1872. | | Votes of 1872, Lynch returns. | | Votes of 1872, Forman returns. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | White. | Colored. | Democratic. | Republican. | White. | Colored. | Democratic. | Republican. | Democratic. | Republicans. |
| Natchitoches | 1,383 | 2,283 | 1,259 | 1,574 | 1,517 | 1,833 | ..... | 1,206 | 1,250 | 550 |
| Ouachita | 826 | 1,819 | 766 | 1,694 | 970 | 2,311 | 606 | 1,441 | 758 | 1,556 |
| Orleans | 28,415 | 18,374 | 26,204 | 13,162 | 34,501 | 20,381 | 20,537 | 14,043 | 22,905 | 13,892 |
| Plaquemines | 769 | 1,920 | 668 | 1,685 | 673 | 1,699 | 460 | 2,163 | 467 | 1,034 |
| Point Coupee | 731 | 2,319 | 639 | 1,990 | 1,039 | 2,807 | 1,092 | 1,154 | 1,142 | 1,552 |
| Rapides | 1,331 | 2,079 | 1,027 | 1,137 | 1,719 | 1,629 | 1,049 | 1,920 | 1,960 | 1,169 |
| Red River | 352 | 915 | 146 | 702 | 441 | 966 | 362 | 913 | 353 | 918 |
| Richland | 714 | 618 | 734 | 440 | 599 | 644 | 646 | 218 | 919 | 273 |
| Sabine | 692 | 227 | 762 | 2 | 711 | 151 | 789 | 62 | 789 | 62 |
| Saint Bernard | 350 | 610 | 271 | 607 | 500 | 570 | 260 | 469 | 412 | 360 |
| Saint Charles | 263 | 1,413 | 278 | 1,268 | 300 | 1,850 | 119 | 1,231 | 141 | 1,231 |
| Saint Helena | 625 | 573 | 692 | 536 | (†) | (†) | 437 | 541 | 703 | 279 |
| Saint James | 770 | 2,370 | 760 | 1,863 | 703 | 2,120 | 657 | 1,852 | (*) | (*) |
| Saint John Baptist | 669 | 1,304 | 627 | 1,216 | 817 | 1,720 | 538 | 1,167 | 533 | 1,162 |
| Saint Landry | 3,109 | 2,863 | 3,517 | 1,634 | 3,718 | 3,641 | 2,347 | 1,890 | 2,922 | 1,345 |
| Saint Mary | 1,050 | 2,541 | 1,050 | 2,148 | 1,117 | 1,941 | 739 | 1,667 | 1,239 | 1,367 |
| Saint Martin | 980 | 936 | 921 | 704 | 1,035 | 926 | 670 | 718 | (*) | (*) |
| Saint Tammany | 669 | 644 | 561 | 581 | 624 | 700 | 111 | 112 | (*) | (*) |
| Tangipahoa | 890 | 669 | 839 | 456 | 917 | 613 | 614 | 769 | 773 | 611 |
| Tensas | 353 | 3,166 | 243 | 2,865 | 368 | 3,146 | 166 | 2,275 | 182 | 2,283 |
| Terre Bonne | 1,227 | 1,882 | 891 | 1,168 | 1,201 | 1,608 | 1,407 | 1,593 | (*) | (*) |
| Union | 1,190 | 633 | 1,161 | 432 | 1,788 | 872 | 460 | 489 | 1,418 | 453 |
| Vernon | 744 | 61 | 712 | ..... | 717 | 79 | 112 | 39 | 690 | 30 |
| Vermillion | 886 | 258 | 692 | 228 | 828 | 282 | 256 | 228 | 676 | 229 |
| Washington | 512 | 156 | 457 | 125 | 543 | 168 | 194 | 176 | 453 | 167 |
| Webster | 880 | 883 | 856 | 749 | 854 | 862 | 377 | 824 | 977 | 622 |
| Winn | 622 | 98 | ..... | ..... | 755 | 135 | 127 | 102 | 575 | 114 |

* Polls excluded. † No reports received or known to exist.

Difference between the provisions of the registration act of 1870 and that of 1874:

1. The State registrar, under act of 1870, section 1, is supervisor of registration for the parish of Orleans; this is dropped by section 1 of act of 1874.

2. The thirteenth section of the act of 1874 provides: "That no supervisor of registration appointed under this act, and no clerk of such supervisor of registration, shall be eligible for any office at any election when said officers officiate"; the corresponding section of the act of 1870, section 14, does not contain this clause, nor does any other provision of the act of 1870. Supervisors of registration under this act often counted themselves into office.

111 EXHIBIT 32.—*Affidavit of E. M. Spann.*

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before the undersigned authority Eldridge M. Spann, who, being duly sworn, says: That he acted as commissioner of election for ward No. 1 in said
112 parish and State at the election on the 2d day of November, A. D. 1874; that after the ballots were counted and the tally-sheets made out, they showed the following vote received by the candidates for State treasurer, Congress, 5th dist., State senator, and representatives, to wit:

*For State treasurer.*—Antoine Dubuclet received 580 votes; John C. Moncure received 21 votes.

*For Congress.*—Frank Morey received 569 votes; Wm. B. Spencer received 33 votes.

*For State senator.*—Jacques A. Gla received 196 votes; George C. Benham received 394 votes; J. Harvey Brigham received 7 votes.

*For representatives.*—Cain Sartain received 404 votes: P. Jones York received 377 votes; J. Ed. Burton received 200 votes; Henry Atkins received 191 votes.

And if the tally-sheets now in the hands of the State returning-board show a different result, they have been altered since I signed the same.

E. M. SPANN.

Sworn to and subscribed before me this 23d day of November, A. D. 1874.
Signed before Raymond Gilbert, J. P., ward No. 1.

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, March 19th*, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.
[SEAL.] P. G. DESLONDE,
*Secretary of State*

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EXHIBIT 33.—*Affidavit of T. D. McCandless.*

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before me, the undersigned, justice of the peace in and for the 4th ward of said parish and State, duly commissioned and sworn, Thomas D. McCandless, a resident of said parish and State, who, after being duly sworn, depssed and said: That, on the 2d day of November, A. D. 1874, he acted under appointment from W. A. Blount as deputy supervisor of election which was held on that day, at the town of Floyd, in said parish and State; that at an early hour in the morning of that day, the commissioners of election, to wit, James I. Milliken, Dr. John M. Gaddis, and George Pride, were sworn in as such by Walter T. C. Anderson, a citizen of the aforesaid ward, parish, and State; that the election was an exceedingly quiet one; that at the usual hour the polls were closed; that after about fifteen minutes' recess said commissioners proceeded to count the vote in the same room where the election had been held, with the following results, to wit:

*State treasurer.*—Dubuclet, 155 votes; Moncure, 75 votes.

*Congress, 5th dist.*—Morey, 155 votes; Spencer, 75 votes.

*State senate.*—Benham, 111 votes; Brigham, 60 votes; Gla, 56 votes.

That there was one (1) vote more, as shown per the tally-sheets, than the list of votes polled; that after the counting was declared at an end and completed, the box containing the votes was taken charge of by Milliken, commissioner, and conducted by him to the back room of a store in the town of Floyd (which he had formerly occupied as a sleeping-room), for safe-keeping, and in which room deponent saw said box the last time; learned next morning (Nov. 3) that said Milliken, with others, had carried it to the town of Lake Providence; that he knows nothing, of his own knowledge, concerning the vote or election at other boxes or precincts than at the town of Floyd, but that he is in possession of the exact vote, as polled at the town of Floyd, for each and every office that was to have an officer elected on said 2d of November to fill, but deems it unnecessary to give the result further than he has in this affidavit.

T. D. McCANDLESS.

Sworn to and subscribed before me on this the 26th day of November, A. D. 1874.

his
MERRILL + JACKSON,
mark.
*Justice of the Peace.*

Attest:
W. A. HEDRICK.

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, March 19th*, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.
[SEAL.] P. G. DESLONDE,
*Secretary of State.*

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113 EXHIBIT 34.—*Affidavit of Richard Dickerson.*

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before the undersigned authority, Richard Dickerson, who, being duly sworn, says that he acted as United States deputy supervisor at precinct No. 5, at Oak Grove, said parish and State, on the day of the election, Monday, 2d day of November, 1874; that he saw the ballots counted, and the tally-sheets, after being made up, showed that—

*For State treasurer.*—John C. Moncure received 106 votes; Antoine Dubuclet received 91 votes.

*For Congress.*—Wm. B. Spencer received 108 votes; Frank Morey received 96 votes.

*For State senator.*—Jaques A. Gla received 129 votes; J. Henry Brigham received 33 votes; Geo. C. Benham received 41 votes.

*For representatives.*—J. Ed. Burton received 133 votes; Henry Atkins received 127 votes; P. Jones York received 65 votes; Cain Sartain received 36 votes.

That the above was a true and correct count of the vote cast for said candidates, as made out and signed by the commissioners, and I signed the same with them; and if the tally-

sheets returned to the returning-board show a different count, the same has been tampered with and changed since delivered by the commissioners to the supervisor.

RICHARD DICKERSON.

Sworn to and subscribed before me this 23d day of November, A. D 1874.

E. F. NEWMAN,
*Mayor and ex-officio Justice of the Peace.*

OFFICE SECRETARY STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.
[SEAL.]

N. DURAND,
*Assistant Secretary of State.*

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EXHIBIT 35.—*Affidavit of R. K. Anderson.*

STATE OF LOUISIANA, *Parish of Orleans:*

I have seen the statement of W. A. Blount, United States supervisor for Carroll Parish, in which he gives the number of votes cast at last election in that parish. He further says that he made this statement from inspection of tally-sheets and other sources of information afforded him by the State supervisor. I know of my own knowledge that he, Blount, never had, or attempted to get, such information from the State supervisor; never saw the complete returns and tally-sheets from all the wards in Carroll Parish, and did in my presence only receive (orally) from the State supervisor, R. M. Lackey, a statement of votes cast for W. B. Spencer and J. E. Moncure.

R. K. ANDERSON.

Sworn to and subscribed before me this 21st day December, A. D. 1874.

WM. WEEKS,
*Assistant Secretary of State.*

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.
[SEAL.]

P. G. DESLONDE,
*Secretary of State.*

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EXHIBIT 36.—*Affidavit of W. W. Benham.*

STATE OF LOUISIANA, *Parish of Carroll:*

Personally appeared before me, the undersigned authority in and for the parish of Carroll, W. W. Benham, of the same parish and State, who deposes and says that he was one of the clerks of the registrar for the parish of Carroll, and that the second day following the election, W. A. Blount, one of the United States supervisors of election for the parish of Carroll, called at the office of the parish registrar and asked for Spencer and Moncure's votes in the parish, saying at the same time that he did not care a snap for the vote of any of the
114 rest of the candidates. I turned to the tally-sheets and gave him the vote of Spencer, 261, and for Moncure 235, when he went away expressing himself fully satisfied. This is all the data said Blount ever had of the election held November 2, 1874.

W. W. BENHAM.

Sworn to and subscribed before me this the 25th November, 1874.

C. E. MOSS, JR.,
*Parish Judge.*

OFFICE SECRETARY OF STATE,
*New Orleans, March* 18, 1875.

I hereby certify that the foregoing is a true copy of the original affidavit on file in this office.
[SEAL.]

P. G. DESLONDE,
*Secretary of State.*

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EXHIBIT 37.—*Affidavit of Mrs. F. Piderit.*

STATE OF LOUISIANA, *Parish of Orleans:*

Personally appeared before me, the undersigned authority, F. Piderit, who, being duly sworn, deposes and says that T. S. Barton, of the parish of Orleans, called at her residence,

No. 150 Jackson street, on the evening of November 10, A. D. 1874; that he was shown into the front parlor and from there into the back parlor; that at the same time Mr. Geo. C. Benham was engaged with a gentleman (whom I afterward learned to be Mr. Riley, of More house Parish) in the front parlor; that this was the only call Mr. Benham received on this evening, and that this was the only time Mr. Benham had ever been engaged with any gentleman writing in my front parlor, or, to my knowledge, in any other part of my house.

MRS. F. PIDERIT.

Sworn to and subscribed before me this the 2d day of December, A. D. 1874.

P. G. DESLONDE,
*Secretary of State.*

OFFICE SECRETARY OF STATE,
*New Orleans, March* 18, 1875.

I hereby certify that the foregoing is a true copy of an original affidavit on file in my office, pertaining to the election held on 2d day of November, A. D. 1874.

——— ———,
*Secretary of State.*

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.

[SEAL.] P. G. DESLONDE,
*Secretary of State.*

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EXHIBIT 38.—*Affidavit of Carrie T. Benham.*

STATE OF LOUISIANA, *Parish of Orleans:*

Personally appeared before me, the undersigned authority, Carrie T. Benham, who, being duly sworn, deposes and says that she was informed by Geo. C. Benham, on Tuesday evening, November 10, A. D. 1874, that he was expecting a call from Mr. Riley, of Morehouse Parish, and about 7 o'clock, as we were sitting on the up-stairs gallery, Mr. Benham looked down as some one came in at the gate, and exclaimed "There comes Mr. Riley"; he immediately descended to the parlor and was gone about an hour. This was the only call Mr. Benham received that evening. No election-returns for the parish of Carroll have ever been in this house, No. 159 Jackson street, and the statement of one T. S. Barton to this effect is wholly without foundation in fact.

CARRIE T. BENHAM.

Sworn to and subscribed before me this the 2d December, A. D. 1874.

P. G. DESLONDE.
*Secretary of State.*

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.

[SEAL.] P. G. DESLONDE,
*Secretary of State.*

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115 EXHIBIT 39.—*Affidavit of S. W. Reily.*

STATE OF LOUISIANA, *Parish of Morehouse:*

Personally appeared before me, the undersigned authority, Saml. W. Reily, a resident of this parish and State, who, being duly sworn, deposes and says that he spent the evening from 7 to 8 o'clock with Mr. Geo. C. Benham, at his boarding-place, No. 159 Jackson st., on Tuesday, Nov. 10, 1874; that he called there in accordance with a previous engagement made in the morning of the same day, and for the purpose of procuring Mr. Benham's assistance in making out his accounts for services as registrar, and that of his clerks, as well as comparing his returns with the law to see if it had been complied with in every way, and if his papers were in due form. It was found that he had not brought along the sworn statement of the clerk of the court, and the following morning, as per engagement, Mr. Benham and myself called at the office of the State registrar and stated the case to him for his advice, which was to leave what returns he had in some safe place in New Orleans and return at once to Morehouse, procure the missing paper, and send it down. Deponent asked the State registrar if he could send the paper to Mr. Benham and have him attend to it, and

he replied "certainly." Immediately upon receiving this advice I took such returns as I had brought, and, in company with Mr. Benham, went to the auditor's office and lodged them in his vault, taking the receipt of his chief clerk, Mr. Schultz, for the same. That evening I left for home, and, on the 17th of Nov., I mailed a registered letter to Mr. Geo. C. Benham, the necessary paper to make my returns complete, requesting him to get the package from the auditor's vault and turn the completed returns over to the returning-board, which he finds was done on the 20th of Nov., as per receipt now in my possession.

Deponent was received by Mr. Benham, at his boarding-house on Jackson st., in the front parlor, and we sat at the center-table, while the doors and windows were all open, and, during his stay, persons, either ladies or gentlemen, were constantly going or coming either in the front or rear parlor. Deponent makes this affidavit because he is informed that one T. S. Barton has made an affidavit to the effect that on this particular night he saw Mr. Benham at this same place with another person engaged in tampering with the returns from Carroll, when it will be seen by the foregoing such was not the case. If Mr. Benham had only been anxious to serve himself he would not have called my attention to the defect in my returns from Morehouse, because defective returns would have aided him greatly, as the parish went against him.

SAML. W. REILY.

Sworn to and subscribed before me this 25th day of November, A. D. 1874.

C. B. WHEELER,
*Parish Judge.*

OFFICE SECRETARY OF STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original affidavit on file in this office.

[SEAL.]

P. G. DESLONDE,
*Secretary of State.*

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EXHIBIT 40.—*Affidavit of Fred. M. Schultz.*

STATE OF LOUISIANA, *Parish of Orleans:*

Personally appeared before me F. Schultz, chief clerk of the auditor's office, who, being duly sworn, deposes and says: That Mr. Reily, of Morehouse Parish, and Mr. Benham, of Carroll, called at the auditor's office on the morning of November 11, 1874, and informed me that they wished to leave a bundle of papers in the auditor's vault, and asked me to give a receipt for the same, which I did. On the morning of the 20th, the receipt was produced for the package, and I turned it over.

FRED. M. SCHULTZ.

Sworn to and subscribed before me this 3d day of December, A. D. 1874.

WM. WEEKS,
*Assistant Secretary of State.*

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
*New Orleans, March* 19, 1875.

I hereby certify that the foregoing is a true copy of the original on file in this office.

P. G. DESLONDE,
*Secretary of State*

116 EXHIBIT 41.—*Official returns of election held in Louisiana in 1874, giving vote for and against amendments to the constitution of the State.*

OFFICIAL.

Consolidated returns of the general election held in the State of Louisiana, on the 2d day of November, 1874, for State treasurer, amendments to the constitution, and limiting the debt of New Orleans, pursuant to a writ of election promulgated on the 10th day of September, 1874, ordering the same, and in accordance with act No. 98, entitled "An act to regulate the conduct and to maintain the freedom and purity of election; to prescribe the mode of making returns thereof; to provide for elections of returning-officers, defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives; and to enforce article one hundred and three of the constitution, approved November 20, 1872."

UNDER ACT NO. 4, SESSION 1874.

*First proposed amendment relative to the issue of consolidated bonds.*

| Parishes. | For approval. | Against approval. | Parishes. | For approval. | Against approval. |
|---|---|---|---|---|---|
| Ascension | 1,869 | 757 | Morehouse | 966 | 617 |
| Assumption | 1,543 | 1,375 | Natchitoches | 1,524 | 1,038 |
| Avoyelles | 1,405 | 1,269 | Ouachita | 1,773 | 681 |
| East Baton Rouge | 2,411 | 1,444 | Orleans | 13,922 | 23,811 |
| West Baton Rouge | 804 | 311 | Plaquemines | 1,644 | 228 |
| Bienville | ..... | ..... | Point Coupee | 1,986 | 538 |
| Bossier | 921 | 702 | Rapides | 1,126 | 834 |
| Caddo | 1,336 | 1,191 | Richland | 439 | 737 |
| Calcasieu | 31 | 324 | Red River | 694 | 147 |
| Caldwell | 359 | 486 | Sabine | 30 | 172 |
| Cameron | 51 | 95 | Saint Bernard | 603 | 266 |
| Carroll | 2,228 | 194 | Saint Charles | 1,278 | 271 |
| Catahoula | 746 | 693 | Saint Helena | 534 | 618 |
| Claiborne | 874 | 1,125 | Saint James | 1,873 | 739 |
| Concordia | 1,650 | 173 | Saint John | 1,329 | 499 |
| De Soto | ..... | ..... | Saint Landry | 2,327 | 2,418 |
| East Feliciana | 1,703 | 771 | Saint Martin's | 705 | 920 |
| West Feliciana | 1,361 | 479 | Saint Mary's | 2,166 | 1,029 |
| Franklin | 75 | 427 | Saint Tammany | 580 | 553 |
| Grant | ..... | ..... | Tangipahoa | 455 | 777 |
| Iberia | 928 | 939 | 117 Tensas | 2,951 | 51 |
| Iberville | 2,046 | 771 | Terre Bonne | 1,164 | 774 |
| Jackson | 2 | 247 | Union | 470 | 1,108 |
| Jefferson (right bank) | 967 | 615 | Vermillion | 224 | 637 |
| Jefferson (left bank) | 644 | 162 | Vernon | 118 | 307 |
| La Fayette | 535 | 975 | Washington | 122 | 448 |
| La Fourche | 1,851 | 1,899 | Webster | 784 | 811 |
| Lincoln | 525 | 580 | Winn | ..... | ..... |
| Livingston | 127 | 663 | | | |
| Madison | 1,613 | 414 | Total | 69,419 | 60,070 |

*roposed amendment, reducing and limiting the State debt to fifteen millions, and limiting taxation.*

| Parishes. | For approval. | Against approval. | Parishes. | For approval. | Against approval. |
|---|---|---|---|---|---|
| a | 1,896 | 757 | Morehouse | 973 | 611 |
| ion | 1,543 | 1,376 | Natchitoches | 1,524 | 1,028 |
| s | 1,409 | 1,264 | Ouachita | 1,807 | 650 |
| on Rouge | 2,413 | 1,441 | Orleans | 13,969 | 23,705 |
| ton Rouge | 804 | 311 | Plaquemines | 1,644 | 228 |
| | | | Point Coupee | 1,988 | 536 |
| | 922 | 701 | Rapides | 1,126 | 834 |
| | 1,337 | 1,193 | Richland | 443 | 733 |
| | 31 | 229 | Red River | 694 | 147 |
| | 368 | 484 | Sabine | 30 | 171 |
| | 65 | 74 | Saint Bernard | 603 | 266 |
| | 2,228 | 194 | Saint Charles | 1,275 | 268 |
| a | 750 | 689 | Saint Helena | 534 | 618 |
| s | 831 | 1,120 | Saint James | 1,868 | 750 |
| a | 1,650 | 173 | Saint John Baptist | 1,359 | 474 |
| | | | Saint Landry | 2,341 | 2,406 |
| iciana | 1,710 | 768 | Saint Martin's | 705 | 920 |
| liciana | 1,361 | 479 | Saint Mary's | 2,166 | 1,029 |
| | 76 | 426 | Saint Tammany | 581 | 551 |
| | | | Tangipahoa | 457 | 775 |
| | 928 | 939 | Tensas | 2,947 | 47 |
| | 2,048 | 764 | 118 Terre Bonne | 1,357 | 686 |
| | 2 | 247 | Union | 471 | 1,107 |
| (right bank) | 971 | 612 | Vermillion | 224 | 687 |
| (left bank) | 648 | 148 | Vernon | 118 | 307 |
| ite | 535 | 974 | Washington | 122 | 448 |
| ahe | 1,852 | 1,898 | Webster | 803 | 747 |
| | 525 | 560 | Winn | | |
| on | 128 | 662 | | | |
| | 1,614 | 413 | Total | 70,824 | 59,634 |

*roposed amendment, devoting annual revenues of the State to the expenses of the same year.*

| Parishes. | For approval. | Against approval. | Parishes. | For approval. | Against approval. |
|---|---|---|---|---|---|
| a | 1,896 | 757 | Morehouse | 973 | 611 |
| ion | 1,541 | 1,377 | Natchitoches | 1,524 | 1,028 |
| s | 1,409 | 1,263 | Ouachita | 1,782 | 678 |
| on Rouge | 2,417 | 1,431 | Orleans | 13,927 | 23,765 |
| ton Rouge | 804 | 311 | Plaquemines | 1,644 | 228 |
| | | | Point Coupee | 1,986 | 538 |
| | 922 | 701 | Rapides | 1,126 | 824 |
| | 1,339 | 1,192 | Richland | 442 | 735 |
| | 32 | 228 | Red River | 694 | 147 |
| | 369 | 483 | Sabine | 30 | 171 |
| | 64 | 74 | Saint Bernard | 603 | 266 |
| | 2,228 | 194 | Saint Charles | 1,275 | 268 |
| a | 749 | 692 | Saint Helena | 534 | 618 |
| s | 863 | 1,135 | Saint James | 1,868 | 750 |
| a | 1,650 | 173 | Saint John Baptist | 1,330 | 493 |
| | | | Saint Landry | 2,340 | 2,406 |
| ciana | 1,712 | 772 | Saint Martin's | 705 | 920 |
| liciana | 1,361 | 479 | Saint Mary's | 2,166 | 1,029 |
| | 81 | 422 | Saint Tammany | 580 | 551 |
| | | | Tangipahoa | 455 | 778 |
| | 928 | 939 | Tensas | 2,952 | 45 |
| | 2,044 | 763 | Terre Bonne | 1,168 | 872 |
| | 1 | 247 | 119 Union | 471 | 1,107 |
| (right bank) | 970 | 613 | Vermillion | 224 | 687 |
| (left bank) | 643 | 158 | Vernon | 117 | 308 |
| ite | 531 | 974 | Washington | 122 | 448 |
| he | 1,851 | 1,899 | Webster | 787 | 765 |
| | 524 | 581 | Winn | | |
| m | 126 | 664 | | | |
| | 1,613 | 413 | Total | 70,499 | 59,996 |

UNDER ACT NO. 22, SESSION OF 1874.

*Amendment limiting the debt of New Orleans*

| Parishes. | For approval. | Against approval. | Parishes. | For approval. | Against approval. |
|---|---|---|---|---|---|
| Ascension | 1,896 | 757 | Morehouse | 969 | 613 |
| Assumption | 1,546 | 1,372 | Natchitoches | 1,524 | 1,028 |
| Avoyelles | 1,409 | 1,268 | Ouachita | 1,713 | 740 |
| East Baton Rouge | 2,413 | 1,440 | Orleans | 13,886 | 23,771 |
| West Baton Rouge | 804 | 311 | Plaquemines | 1,644 | 228 |
| Bienville | ..... | ..... | Point Coupee | 1,987 | 538 |
| Bossier | 921 | 702 | Rapides | 1,126 | 834 |
| Caddo | 1,335 | 1,198 | Richland | 441 | 736 |
| Calcasieu | 40 | 192 | Red River | 30 | 45 |
| Caldwell | 362 | 483 | Sabine | 30 | 171 |
| Cameron | 60 | 77 | Saint Bernard | 603 | 266 |
| Carroll | 2,228 | 194 | Saint Charles | 1,275 | 267 |
| Catahoula | 743 | 700 | Saint Helena | 534 | 618 |
| Claiborne | 779 | 1,197 | Saint James | 1,868 | 759 |
| Concordia | 1,650 | 173 | Saint John Baptist | 1,314 | 469 |
| De Soto | ..... | ..... | Saint Landry | 2,326 | 2,222 |
| East Feliciana | 1,690 | 775 | Saint Martin's | 705 | 920 |
| West Feliciana | 1,361 | 479 | Saint Mary's | 2,166 | 1,029 |
| Franklin | 74 | 426 | Saint Tammany | 579 | 551 |
| Grant | ..... | ..... | Tangipahoa | 546 | 776 |
| Iberia | 923 | 939 | Tensas | 2,958 | 43 |
| Iberville | 2,042 | 769 | Terre Bonne | 1,168 | 849 |
| Jackson | 1 | 243 | 120 Union | 474 | 1,107 |
| Jefferson (right bank) | 814 | 384 | Vermillion | 294 | 687 |
| Jefferson (left bank) | 645 | 161 | Vernon | 119 | 290 |
| La Fayette | 531 | 974 | Washington | 122 | 448 |
| La Fourche | 1,852 | 1,898 | Webster | 768 | 825 |
| Lincoln | 523 | 582 | Winn | ..... | ..... |
| Livingston | 125 | 665 | | | |
| Madison | 1,609 | 416 | Total | 69,750 | 59,640 |

UNDER ACT NO. 64, SESSION 1874.

*Amendment to article seventeen, relative to day of electing representatives.*

| Parishes. | For approval. | Against approval. | Parishes. | For approval. | Against approval. |
|---|---|---|---|---|---|
| Ascension | 1,896 | 757 | Morehouse | 972 | 612 |
| Assumption | 1,547 | 1,371 | Natchitoches | 1,524 | 1,029 |
| Avoyelles | 1,401 | 1,867 | Ouachita | 1,725 | 729 |
| East Baton Rouge | 2,410 | 1,441 | Orleans | 13,825 | 23,833 |
| West Baton Rouge | 804 | 311 | Plaquemines | 1,644 | 228 |
| Bienville | ..... | ..... | Point Coupee | 1,986 | 538 |
| Bossier | 921 | 702 | Rapides | 1,426 | 834 |
| Caddo | 1,334 | 1,195 | Richland | 444 | 734 |
| Calcasieu | 108 | 191 | Red River | 30 | |
| Caldwell | 364 | 434 | Sabine | 30 | 171 |
| Cameron | 47 | 69 | Saint Bernard | 603 | 266 |
| Carroll | 2,227 | 194 | Saint Charles | 1,276 | 267 |
| Catahoula | 737 | 701 | Saint Helena | 534 | 618 |
| Claiborne | 784 | 1,191 | Saint James | 1,863 | 759 |
| Concordia | 1,650 | 173 | Saint John Baptist | 1,361 | 467 |
| De Soto | ..... | ..... | Saint Landry | 2,329 | 2,259 |
| East Feliciana | 1,700 | 778 | Saint Martin's | 705 | 920 |
| West Feliciana | 1,361 | 479 | Saint Mary's | 2,166 | 1,029 |
| Franklin | 176 | 260 | Saint Tammany | 580 | 552 |
| Grant | ..... | ..... | Tangipahoa | 453 | 779 |
| Iberia | 928 | 939 | Tensas | 2,338 | 43 |

*Amendment to article seventeen, &c.*—Continued.

| Parishes. | For approval. | Against approval. | Parishes. | For approval. | Against approval. |
|---|---|---|---|---|---|
| Iberville | 2,050 | 770 | Terre Bonne | 1,173 | 870 |
| Jackson | 1 | 271 | 121 Union | 475 | 1,107 |
| Jefferson (right bank) | 970 | 613 | Vermillion | 224 | 687 |
| Jefferson (left bank) | 645 | 161 | Vernon | 341 | 197 |
| La Fayette | 530 | 974 | Washington | 122 | 448 |
| La Fourche | 1,854 | 1,737 | Webster | 770 | 828 |
| Lincoln | 523 | 582 | Winn | ..... | ..... |
| Livingston | 124 | 665 | | | |
| Madison | 1,618 | 408 | Total | 67,234 | 59,528 |

J. MADISON WELLS.
THOMAS C. ANDERSON.
LOUIS M. KENNER.
G. CASANAVE.

A true copy.

P. G. DESLONDE,
*Secretary of State.*

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,
*New Orleans, La., April* 14, 1874.

I certify that the foregoing is a true extract of the original on file in my office.
[SEAL.] P. G. DESLONDE,
*Secretary of State.*

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EXHIBIT 42.—*Promulgated returns of election in the parishes of Concordia and Carroll.*

OFFICIAL.

Compiled returns of an election held in the parish of Concordia, State of Louisiana, on the second day of November, A. D. 1874, under a writ of election dated the tenth day of September, A. D. 1874, ordering same, and pursuant to the provisions of act No. 98, to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning-officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article one hundred and three of the constitution, approved November 20, A. D. 1872, to wit:

FOR REPRESENTATIVES.

| | | | |
|---|---|---|---|
| James Randall | 1,885 | Anderson Tolliver | 312 |
| William Ridgley | 1,197 | Thomas Reber | 752 |
| F. S. Shields | 146 | Scattering | |

FOR PARISH JUDGE.

| | | | |
|---|---|---|---|
| J. S. Meng | 1,802 | William Forbes | 15 |
| M. A. Scott | 115 | Scattering | |

FOR SHERIFF.

| | | | |
|---|---|---|---|
| Oren Stewart | 657 | W. H. Hough, jr | 758 |
| J. B. Heiserodt | 121 | Sam. Johnson | 441 |

FOR CORONER.

| | | | |
|---|---|---|---|
| George Randall | 1,677 | Scattering | 2 |
| J. Franklin | 70 | | |

FOR JUSTICES OF THE PEACE.

| | |
|---|---|
| First ward: | |
| Charles Wade | 119 |
| R. H. Butterfield | 43 |
| 122 Second ward: | |
| James Foy | 90 |
| Polk Smith | 50 |
| J. V. L. Scott | 52 |
| Third ward: | |
| Tom Singleton | 93 |
| Morris Brown | 49 |
| Robert Davis | 63 |
| Robert Johnson | 43 |
| Fourth ward: | |
| Henderson Smith | 6 |
| Samuel W. Henry | 21 |
| John Tatum | 321 |
| Elijah Connell | 57 |
| Jerry Crutcher | 43 |
| H. N. Norment | 22 |
| Fifth ward: | |
| L. Mackell | 246 |
| R. H. Columbus | 67 |
| Perry Whittaker | 152 |
| Sixth ward: | |
| Dan Wright | 67 |
| Aaron Owens | 6 |
| Robert Oakman | 25 |
| Seventh ward: | |
| N. T. Randolph | 25 |
| Peter Hooper | 134 |
| Eighth ward: | |
| Isaac Beard | 21 |
| M. Majors | 47 |
| Ninth ward: | |
| J. H. Moreland | 15 |
| Tenth ward: | |
| L. B. Jackson | 13 |
| Scattering | 7 |

FOR CONSTABLES.

| | |
|---|---|
| First ward: | |
| Peter Weir | 156 |
| Second ward: | |
| Wilson Thornton | 74 |
| John Holmes | 110 |
| T. H. Bessac | 14 |
| Third ward: | |
| Hampton King | 67 |
| Isaac Crompton | 173 |
| Fourth ward: | |
| P. Cook | 168 |
| Jake Dorsey | 213 |
| —— Franklin | 6 |
| Fifth ward: | |
| Hardy Duncan | 379 |
| C. H. Grimes | 4 |
| Sixth ward: | |
| Boswell Jones | 7 |
| Joseph Harding | 61 |
| Seventh ward: | |
| John Webb | 28 |
| Joe Williams | 62 |
| A. Beaman | 21 |
| E. Beaman | 12 |
| W. Miles | 31 |
| Eighth ward: | |
| Orange Miles | 39 |
| C. J. Montgomery | 7 |
| Scattering | |

FOR POLICE JURORS.

| | |
|---|---|
| Nathan Lorie | 1,326 |
| G. L. Walton | 1,600 |
| Handy Walton | 47 |

| | |
|---|---|
| 123 George Washington | 1,525 |
| George Washington, sr | 379 |
| James Pullin | 273 |
| Charles Hall | 1,693 |
| James Hall | 107 |
| James S. Gaynor | 727 |
| Polk Smith | 130 |
| George S. Sawyer | 210 |
| Arthur King | 127 |
| A. Brown | 64 |
| Anderson Waters | 73 |
| J. Johnson | 26 |
| Jackson Carter | 173 |
| Sam Keyes | 32 |
| George Randall | 5 |
| Albert Gaines | 28 |
| W. P. Bowman | 46 |
| J. Ballard | 122 |
| T. Napper | 52 |
| N. S. W. Strauter | 48 |
| T. E. D. Jefferson | 8 |
| A. Johnson | 30 |
| A. Marshall | 130 |
| E. Grice | 31 |
| Thomas Fox | 33 |
| W. A. Bowman | 9 |
| Scattering | 61 |

We, the undersigned returning-officers, pursuant to authority vested in us by act No. 98, approved November 20, 1872, do hereby certify the foregoing is a true and correct compilation of the statement of votes cast at an election for members of the house of representatives and parochial officers, held on the second day of November, A. D. 1874, under a writ of election promulgated on the tenth day of September, A. D. 1874, ordering same, and we hereby declare that the following-named persons were duly and lawfully elected, to wit:

For representatives—James Randall, William Ridgley.
For parish judge—J. S. Meng.
For sheriff—W. O. Hough, jr.
For coroner—George Randall.

For justices of the peace—Charles Wade, Tom Singleton, John Tatum, L. Mackell, Peter Hooper.

For constables—Peter Weir, John Holmes, J. Compton, Jake Dorsey, Hardy Duncan.

For police jurors—Nathan Lorie, G. L. Walton, George Washington, Charles Hall, James S. Gaynor.

J. MADISON WELLS.
THOMAS C. ANDERSON.
G. CASANAVE.
LOUIS M. KENNER.
OSCAR ARROYO.

130

EXHIBIT 25.—*Statement of votes at poll No. 5, parish of Concordia.*

Statement of votes cast at poll No. 5, of election-precinct No. 5, of the parish of Concordia, for members of Congress, State and parish officers, at the general election November 2, 1874, in accordance with law:

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| * | * | * |
| Frank Morey | Congress, fifth dist | (440) four hundred and forty. |
| F. Morey | Congress, fifth dist | (1) one. |
| W. B. Spencer | Congress, fifth dist | (36) thirty-six. |
| Wm. Spencer | Congress, fifth dist | (1) one. |
| * | * | * |
| A. B. Boner | Congress, fifth dist | (3) three. |

*Statement of votes*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| (498) four hundred and ninety-eight. | None. | |

STATE OF LOUISIANA, *Parish of Concordia:*

Personally appeared before me, the undersigned authority, John F. Dameron, R. H. Columbus, and T. E. D. Jefferson, duly appointed and qualified commissioners of
131 election of poll No. 5, election-precinct of the parish of Concordia, for the general election held November 2, 1874, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned, that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on that day.

Sworn and subscribed to before me this 4th day of November, A. D. 1874.

JNO. A. WASHINGTON,
*Supervisor of Registration.*

JNO. F. DAMERON,
THOS. E. D. JEFFERSON,
R. H. COLUMBUS,
*Commissioners of Election, Poll No. 5, Parish of* ———.

OFFICE OF SECRETARY OF STATE,
*New Orleans, La., April* 5, 1875.

I certify the foregoing to be a true copy of the original document filed in my office by the board of returning officers of the State of Louisiana, in so far as it relates to Frank Morey, F. Morey, W. B. Spencer, Wm. Spencer, and A. B. Boner.

[SEAL.]

N. DURAND,
*Assistant Secretary of State.*

EXHIBIT "LAWS"—*Election laws of Louisiana.*

No. 98.] AN ACT to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning-officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article one hundred and three of the constitution.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress, shall be held on the first Monday in November; and said election shall be styled the general elections. They shall be held in the manner and form and subject to the regulations hereinafter prescribed, and no other.

SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the senate from all political parties, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning-officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God."

Within ten days after the closing of the election said returning-officers shall meet in New Orleans to canvass and compile the statements of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open in the presence of the said returning-officers the statements of the commissioners of election, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima-facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the returning-officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting-place there shall be received the statement of any supervisor of registration or commissioner of election, in form as required by section twenty-six of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which pre-
132 vented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning-officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning-officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning-officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning-officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning-officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning-officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning-officers upon making application within the time allowed for the forwarding of the returns of said election.

voter of the precinct in which the poll or voting-place may be situated, and it shall be the duty of the commissioners of election, as soon as the voter has deposited his vote, to erase his name from said list. Any person, except the commissioners of election, who shall mark, disfigure, or erase any part of said list, shall be immediately arrested and confined until the close of the polls. It is made the duty of all supervisors of registration, commissioners of election, and public officers to enforce the penalty of this section.

SEC. 23. *Be it further enacted, &c.*, That the sheriff of each parish shall furnish to the commissioners of election at each poll or voting-place within his parish a box sufficient to contain the votes to be given at such place. Such boxes shall be so bound with iron bands that the same cannot be opened, except by the locks, without breaking such bands, and such boxes shall each be furnished with a good lock and key. The expenses for such boxes, on the presentation by the sheriff of a specific account, sworn by him to be correct, shall be paid by the city or parish, as the case may be.

SEC. 24. *Be it further enacted, &c.*, That all elections held in this State to fill any vacancies, shall be conducted and managed and returns thereof shall be made in the same manner as is provided for general elections.

SEC. 25. *Be it further enacted, &c.*, That it shall be the duty of the governor to commission all officers elect, except members of the general assembly, the governor, and the members of the police jury.

SEC. 26. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town, in which during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, and disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting-place, or place of registration, or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences occur on the day of election, or of the supervision of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riots, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or a supervisor of registration, he shall
135 forward it in duplicate to the supervisor of registration of the parish; if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning-officers provided for in section two of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

SEC. 27. *Be it further enacted, &c.*, That as soon as possible after the expiration of the time of the making of the returns of the election for Representatives in Congress, a certificate of the returns of the election for such Representatives shall be entered on record by the secretary of state, and signed by the governor, and a copy thereof subscribed by said officers shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Clerk thereof.

SEC. 28. *Be it further enacted, &c.*, That in case of vacancy by death or otherwise in the said office of Representatives in Congress between the general elections, it shall be the duty of the governor by proclamation to cause an election to be held according to law to fill the vacancy.

SEC. 29. *Be it further enacted, &c.*, That in every year in which an election shall be held for electors of President and Vice-President of the United States, such election shall be held at the time fixed by act of Congress.

SEC. 30. *Be it further enacted, &c.*, That whenever the seat of any senator or representative shall become vacant, and there shall be a session of the general assembly then sitting, or to be held before the next general election, it shall be the duty of the governor, within five days after such vacancy has come to his knowledge in any credible shape, to issue his writ of election, directed to the supervisor or supervisors of registration in and for the parish or parishes in which such vacancy may exist, whose duty it shall be, within three days after its receipt, to give public notice that an election will be held to fill such vacancy on a day to be named by them, which day shall not be less than eight nor more than fifteen days after the publication of such notice, if such election be held during or within fifteen days next preceding a session of the general assembly; but if not, then the election shall be held not less than twenty nor more than thirty days after the publication of such notice, and shall be held and conducted and the returns thereof made in the manner and form provided by law for general elections.

with their names and numbers as aforesaid, shall be signed and sworn to as correct by the commissioners immediately on closing the polls, and before leaving the place, and before opening the box. If no judge, or justice of the peace, or other person authorized to administer such oath, be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting-place immediately after closing the election and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any bystander or citizen who may be present. Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall perserve the same as above required; and in the parish of Orleans, the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed.

SEC. 14. *Be it further enacted, &c.*, That in case the right of any person to vote is challenged, the commissioners of election shall have power to administer oaths and affirmations to persons offering to vote at any election conducted by them, and to examine such persons under oath touching their right to vote at such elections, and in all cases the commissioners of election shall appoint one of their number to keep a record of the voters during the election, and another to receive the votes; and whenever a vote is received, the commissioner of election keeping the record shall call the name of the voter aloud and shall mark the letter V opposite said name on the record.

SEC. 15. *Be it further enacted, &c.*, That all supervisors of registration, commissioners of election, and officers attending supervisors of registration or commissioners of election, shall be free from arrest during the time of registration, or of the revision of the registration, or of holding the election, or in going to or returning from the place of registration, or poll, or voting-place, unless he or they shall be charged with an offense punishable with death or imprisonment in the penitentiary.

SEC. 16. *Be it further enacted, &c.*, That all proper expenses incurred for the rent of polling or voting-places, and the hire of furniture, and for incidental expenses necessary for holding the election, shall, upon presentation of a detailed account thereof, duly sworn to by the officer directed to procure the same, be paid by the authorities of the city of New Orleans, or of the parish, as the case may be, in which the elections are held.

SEC. 17. *Be it further enacted, &c.*, That no person shall be permitted to vote at any election to be held in this State who has not been duly registered as a qualified voter in accordance with law.

SEC. 18. *Be it further enacted, &c.*, That any voter shall vote in the parish wherein he resides, except in the parishes of Orleans and Jefferson, wherein he shall vote at the election precinct in which he shall be a registered voter.

134 SEC. 19. *Be it further enacted, &c.*, That all names of persons voted for by each voter shall be written or printed on one ticket, on which the names of the persons voted for, together with the office for which they are voted for, shall be accurately specified; and should two or more tickets be folded together, the tickets so folded shall be rejected: *Provided*, That no person shall be allowed to vote for ward or municipal officers except in the ward or municipality in which he resides. The commissioners of election shall require every person offering to vote to exhibit his certificate of registration, and when the vote of such person is received the commissioners of election shall write on or stamp on such certificate or affidavit the word "voted," and the date of the vote, which shall be signed by one of the commissioners; and any person being guilty of erasing or altering any stamp or mark thus made by the commissioners of election, or any one of them, shall, upon conviction, be deemed guilty of a misdemeanor, and be fined and imprisoned at the discretion of the court.

SEC. 20. *Be it further enacted, &c.*, That the commissioners shall have the right to require that any person attempting to vote shall be put on his oath and made to declare whether he has voted at another poll or voting-place; and in case such person shall make a false oath he shall be subjected to the penalties provided by law for perjury; and it is hereby made the duty of any commissioner of election, upon the request of any voter, to administer the oath herein required, and any commissioner of election refusing or neglecting to administer the oath when so required shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, and by imprisonment for a term of not less than three months.

SEC. 21. *Be it further enacted, &c.*, That any person offering to vote may be required by the commissioners to make oath and declare that he is the person to whom was issued the registration-certificate or any other paper upon which he offers to vote, and that he has not voted at any other poll or voting-place; and in case he shall make a false oath, he shall be liable to the pains and penalties of perjury prescribed by law.

SEC. 22. *Be it further enacted, &c.*, That the supervisor of registration for each parish throughout the State shall furnish to the commissioners of election at each poll or voting-place within his parish a correct and duly certified list, written or printed, in alphabetical order of all the registered voters, and the number of the certificate of registration of each

voter of the precinct in which the poll or voting-place may be situated, and it shall be the duty of the commissioners of election, as soon as the voter has deposited his vote, to erase his name from said list. Any person, except the commissioners of election, who shall mark, disfigure, or erase any part of said list, shall be immediately arrested and confined until the close of the polls. It is made the duty of all supervisors of registration, commissioners of election, and public officers to enforce the penalty of this section.

SEC. 23. *Be it further enacted, &c.*, That the sheriff of each parish shall furnish to the commissioners of election at each poll or voting-place within his parish a box sufficient to contain the votes to be given at such place. Such boxes shall be so bound with iron bands that the same cannot be opened, except by the locks, without breaking such bands, and such boxes shall each be furnished with a good lock and key. The expenses for such boxes, on the presentation by the sheriff of a specific account, sworn by him to be correct, shall be paid by the city or parish, as the case may be.

SEC. 24. *Be it further enacted, &c.*, That all elections held in this State to fill any vacancies, shall be conducted and managed and returns thereof shall be made in the same manner as is provided for general elections.

SEC. 25. *Be it further enacted, &c.*, That it shall be the duty of the governor to commission all officers elect, except members of the general assembly, the governor, and the members of the police jury.

SEC. 26. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town, in which during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, and disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting-place, or place of registration, or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences occur on the day of election, or of the supervision of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riots, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or a supervisor of registration, he shall
135 forward it in duplicate to the supervisor of registration of the parish; if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning-officers provided for in section two of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

SEC. 27. *Be it further enacted, &c.*, That as soon as possible after the expiration of the time of the making of the returns of the election for Representatives in Congress, a certificate of the returns of the election for such Representatives shall be entered on record by the secretary of state, and signed by the governor, and a copy thereof subscribed by said officers shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Clerk thereof.

SEC. 28. *Be it further enacted, &c.*, That in case of vacancy by death or otherwise in the said office of Representatives in Congress between the general elections, it shall be the duty of the governor by proclamation to cause an election to be held according to law to fill the vacancy.

SEC. 29. *Be it further enacted, &c.*, That in every year in which an election shall be held for electors of President and Vice-President of the United States, such election shall be held at the time fixed by act of Congress.

SEC. 30. *Be it further enacted, &c.*, That whenever the seat of any senator or representative shall become vacant, and there shall be a session of the general assembly then sitting, or to be held before the next general election, it shall be the duty of the governor, within five days after such vacancy has come to his knowledge in any credible shape, to issue his writ of election, directed to the supervisor or supervisors of registration in and for the parish or parishes in which such vacancy may exist, whose duty it shall be, within three days after its receipt, to give public notice that an election will be held to fill such vacancy on a day to be named by them, which day shall not be less than eight nor more than fifteen days after the publication of such notice, if such election be held during or within fifteen days next preceding a session of the general assembly; but if not, then the election shall be held not less than twenty nor more than thirty days after the publication of such notice, and shall be held and conducted and the returns thereof made in the manner and form provided by law for general elections.

SEC. 31. *Be it further enacted, &c.*, That in all future elections for senators, representatives, sheriffs, coroners, clerks of the district courts, and other officers, if there should be an equal number of votes given for two or more candidates for the same office, the election for such office or offices thus not filled shall be again returned to the people in the parish or district, as the case may be, public notice of ten days to be first given in the same manner as in the general elections.

SEC. 32. *Be it further enacted, &c.*, That the provisions of this act, except as to the time of holding elections, shall apply to the election of all officers whose election is not otherwise provided for.

SEC. 33. *Be it further enacted, &c.*, That it shall be the duty of the governor, at least six weeks before any general election, to issue his proclamation, giving notice thereof, which shall be published in the official journal of the State, and copies thereof forwarded to the several supervisors of registration throughout the State.

SEC. 34. *Be it further enacted, &c.*, That notice of every general election held under the provisions of this act shall be given at least thirty days before the election by notices posted up in each precinct; or, if there be an official newspaper published in the parish, by publishing the notice in such paper.

SEC. 35. *Be it further enacted, &c.*, That the supervisors of registration or commissioners of election shall, on the day of election, close all drinking-saloons, dram-shops, groggeries, or places where liquor is sold by the glass or bottle, situated in a radius of two miles of any poll or voting-place, and said supervisors of registration or commissioners of election shall have the power to call on any sheriff, constable, or police-officer to enforce this regulation. If such sheriff, constable, or police-officer shall refuse to obey any order issued under the authority of this section, the supervisor of registration giving the order shall summarily arrest and imprison such sheriff, constable, or police-officer, such imprisonment not to extend beyond the hour of closing the polls. And such sheriff, constable, or police-officer so refusing to obey such order shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be punished by imprisonment for a term not to exceed six months nor less than three months, and by a fine of not more than five hundred dollars nor less than one hundred dollars.

SEC. 36. *Be it further enacted, &c.*, That the governor, any justice of the peace, alderman, mayor, judge, or any State officer who may be present at or have knowledge of any drinking-saloon, dram-shop, groggery, or place where liquor is sold by the glass or bottle,
136 which is open contrary to the provisions of the foregoing section within the limits therein prescribed, may, in writing, order any police-officer or constable to seize any such liquors, or any carriages or vessels containing the same, or any booths or tents erected within said limits for the purpose of exposing such intoxicating liquors for sale.

SEC. 37. *Be it further enacted, &c.*, That the constable or police-officer to whom such orders shall be delivered shall thereupon seize all such liquor, carriages, vessels, and materials of any such tent or booth, and hold and detain the same until twenty-four hours after the close of the election; then to be delivered on demand to the owner or the person from whom they were taken, on the payment of ten dollars for the safe-keeping of said articles.

SEC. 38. *Be it further enacted, &c.*, That if these effects be not thus demanded, the same shall be sold at public auction by the police-officer or constable making the seizure; and the proceeds of such sale, after deducting the costs of sale and safe-keeping, shall be paid to the owner of the articles sold, or the person from whom the same were taken.

SEC. 39. *Be it further enacted, &c.*, That no voter whose name is registered according to law shall be challenged at the polls on any question of residence, but it shall be the duty of the commisioners of election to require every person whose name appears on the registration-books to prove his identity, if required, by the commissioners of election; and any commissioner of election who shall receive a second vote on the same day, by virtue of the same certificate of registration, and any person who shall offer to vote a second time upon any certificate of registration, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined or imprisoned, or both, at the discretion of the court, but the fine shall not exceed one hundred dollars in each case, nor the imprisonment one year, and the like punishment shall, on conviction, be inflicted on any commissioner of election who shall neglect or refuse to make the indorsement required as aforesaid in the said registration-certificate.

SEC. 40. *Be it further enacted, &c.*, That if any clerk of a court, or deputy of any such court, or any other person, shall affix the seal of office to any naturalization-paper, or permit the same to be affixed, or give out, or cause or permit the same to be given out in blank, whereby it may be fraudulently used, or furnish a naturalization certificate to any person who shall not have been duly examined and sworn in open court in the presence of some of the judges thereof according to the act of Congress, or shall aid in, connive at, or in any way permit the issue of fraudulent naturalization certificates, he shall be deemed guilty of a misdemeanor; or if any one shall fraudulently use any such certificate of naturalization, knowing it to have been fraudulently issued, or shall vote or attempt to vote thereon, or if any one shall vote or attempt to vote on any certificate of naturalization not issued to him, he shall be deemed guilty of a misdemeanor, and either or any of the persons, their aiders or abettors, guilty of either of the misdemeanors aforesaid, shall, on conviction, be fined in a sum

not exceeding one thousand dollars, and imprisoned in the penitentiary for a period not exceeding three days.

SEC. 41. *Be it further enacted, &c.*, That if any person, on oath or affirmation, in or before any court in the State, or officer authorized to administer oaths, shall, to procure a certificate of naturalization for himself or any other person, willfully depose, declare, or affirm any matter to be fact, knowing the same to be false, or shall, in like manner, deny any matter to be fact, knowing the same to be true, he shall be deemed guilty of perjury; and any certificate of naturalization issued in pursuance of such deposition or affirmation shall be null and void; and it shall be the duty of the court issuing the same, upon proof being made before it that it was fraudulently obtained, to take immediate measures for recalling the same for cancellation; and any person who shall vote or attempt to vote on any paper so obtained, or who shall in any way aid in, connive at, or have any agency whatever in the issue, circulation, or use of any fraudulent naturalization certificate, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall undergo an imprisonment in the penitentiary for not more than two years, and pay a fine of not more than one thousand dollars for every such offense, or either or both, at the discretion of the court.

SEC. 42. *Be it further enacted, &c.*, That at all general elections the names of all candidates to be voted for in the city of New Orleans shall be written or printed on one ticket or slip of paper, and the number of the ward and election precinct in which the ticket is to be voted for shall be printed or written on the outside-fold thereof.

SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election, the commissioners of the election at each poll or voting-place shall proceed to count the votes, as provided in section thirteen of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all of such commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of regis-
137 tration, within twenty-four hours after the receipt of all the returns for the different polling-places, to consolidate such returns to be certified as correct by the clerk of the district court, and forward the consolidated returns with the originals received by him to the returning-officers provided for in section two of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section twenty-six of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes.

SEC. 44. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly; and it shall be the duty of the said clerk and secretary to place the names of the representatives and senators elect so furnished upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article 34 of the constitution of the State.

SEC. 45. *Be it further enacted, &c.*, That any civil officer or other person who shall assume or pretend to act in any capacity as a commissioner or other officer of election to receive or count votes, to receive returns or ballot-boxes, or to do any other act toward the holding or conducting elections, or the making returns thereof, in violation of or contrary to the provisions of this act, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not to exceed three years nor less than one year, and by a fine not exceeding three hundred dollars nor less than one hundred dollars.

SEC. 46. *Be it further enacted, &c.*, That any person or persons who shall obstruct, hinder, or by violence or threats of violence, abusive language, or other species of intimidation, interfere with a supervisor or commissioner of election, or with any person or persons duly appointed to execute orders of the supervisor of registration or commissioners of election in the discharge of their duties, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding three hundred dollars, nor less than one hundred dollars, and by imprisonment for a period not exceeding three months nor less than one month.

SEC. 47. *Be it further enacted, &c.*, That any person or persons who shall counsel, aid, connive at, abet, encourage, or participate in any riots, tumults, acts of violence, intimidation, or armed disturbance, at, or near the office of any supervisor of registration, on any day of registration or revision of registration, or at or near any poll or voting-place on any day of election, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by

fine not exceeding five hundred dollars, nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not exceeding two years nor less than six months.

SEC. 48. *Be it further enacted, &c.*, That any person who shall register, or cause to be registered, his name, or that of any other person, as a legal voter, in violation of law, or vote, or induce or cause another to vote, in violation of the laws, or of the constitutional provisions in such cases made and provided, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period of not less than one year nor more than three years.

SEC. 49. *Be it further enacted, &c.*, That any person or persons who shall purchase or cause to be purchased the registration-papers, or certificate of registration, of any person duly registered according to law, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a term of not less than one year nor more than three years.

SEC. 50. *Be it further enacted, &c.*, That any person who shall vote, or attempt to vote, on any false or fraudulent paper or certificate of registration, or upon any paper or certificate of registration issued to a person other than the one voting or attempting to vote on said paper or certificate of registration, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a term not less than one year nor more than three years.

SEC. 51. *Be it further enacted, &c.*, That any person who shall induce, by offer of reward, by threats of violence, or otherwise, any person to vote, or attempt to vote, on any false or fraudulent paper or certificate of registration, or upon any papers or certificate of registration belonging to a person other than the one voting or attempting to vote on said paper or certificate of registration, shall be deemed guilty of a felony, and, on conviction thereof, 138 shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not exceeding three years nor less than one year.

SEC. 52. *Be it further enacted, &c.*, That any person who shall vote or attempt to vote more than once at the same election shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the penitentiary for a term of not less than three years.

SEC. 53. *Be it further enacted, &c.*, That it shall be the duty of any commissioner of election to forthwith arrest any person who shall vote, or attempt to vote, more than once, and commit him to the parish-prison, and to immediately file an information against such person with the district attorney, or the district attorney *pro tempore*, whose duty it shall be to prosecute such person before the proper court; and upon his failure to do so, the attorney-general shall appoint some attorney to prosecute such person, and also to prosecute such district attorney, or district attorney *pro tempore*, for such failure. Any supervisor of registration, commissioner of election, district attorney, or district attorney *pro tempore*, who shall refuse, neglect, or fail to comply with the provisions of this section of this act, shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be removed from office and punished by a fine of not less than one hundred dollars, and imprisonment for not less than three nor more than six months.

SEC. 54. *Be it further enacted, &c.*, That any person who shall by threats of discharge from employment, of withholding wages, or proscription in business, influence, or attempt to influence, any voter in the casting of his vote at any election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars, which shall go to the school-fund of the parish, and be imprisoned in the parish prison for not less than three months.

SEC. 55. *Be it further enacted, &c.*, That any person who shall discharge from his employment any laborer, employé, tenant, or mechanic, who shall have been working for such person under contract, written or oral, for a specified time, before such time shall have expired, or who shall withhold from any laborer, employé, tenant, or mechanic any part of the wages due to such laborer, employé, tenant, or mechanic on account of any vote which such laborer, employé, tenant, or mechanic has given or proposes to give, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars—one-half of which shall go to the school-fund of the parish in which the offense was committed—and by imprisonment in the parish-prison for not less than three months.

SEC. 56. *Be it further enacted, &c.*, That any person who shall molest, disturb, interfere with, or threaten with violence, any commissioner of election, or person in charge of the ballot-boxes, while in charge of the same, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary not less than one year, or both, at the discretion of the court.

SEC. 57. *Be it further enacted, &c.*, That any person, not authorized by this law to receive or count the ballots at any election, who shall, during or after any election, and before the

votes have been counted, disturb, displace, conceal, destroy, handle, or touch any ballot after the same has been received from the voter by a commissioner of election, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment for not less than six months, or both, at the discretion of the court.

SEC. 58. *Be it further enacted, &c.*, That any person not authorized by this law to take charge of the ballot-boxes at the close of the election, who shall take, receive, conceal, displace, or in any manner handle or disturb any ballot-box at any time between the hour of the closing of the polls and the transmission of the ballot-box to the clerk of the district court, or during such transmission, or at any time prior to the counting of the votes, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary for not less than one year, or both, at the discretion of the court.

SEC. 59. *Be it further enacted, &c.*, That it shall be unlawful for any person to carry any gun, pistol, bowie-knife, or any other dangerous weapon, concealed or unconcealed, on any day of election during the hours the polls are open, or any day of registration or revision of registration, within a distance of one-half mile of any place of registration or revision of registration, or election-poll. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than one hundred dollars and by imprisonment in the parish-jail for not less than one month: *Provided*, That the provisions of this section shall not apply to any commissioner or officer of the election, or supervisor of registration, police-officer, or other person authorized to preserve the peace on days of registration or election.

SEC. 60. *Be it further enacted, &c.*, That no person shall give, sell, barter any spirituous or intoxicating liquors to any person on the day of election, and any person found
139 guilty of violating the provisions of this section shall be fined in a sum of not less than one hundred dollars nor more than three hundred dollars, which shall go to the school-fund.

SEC. 61. *Be it further enacted, &c.*, That whoever, knowing that he is not a qualified voter, shall vote or attempt to vote at any election, shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 62. *Be it further enacted, &c.*, That whoever shall knowingly give or vote two or more ballots voted as one at any election, shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 63. *Be it further enacted, &c.*, That whoever, by bribery or by promise to give employment or higher wages to any person attempts to influence any voter at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the parish-prison for not less than three months.

SEC. 64. *Be it further enacted, &c.*, That whoever willfully aids or abets any one not legally qualified to vote at any election shall be fined in a sum of not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 65. *Be it further enacted, &c.*, That whoever is disorderly at any poll or voting-place during the election shall be fined in a sum not less than twenty dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 66. *Be it further enacted, &c.*, That whoever shall molest, interrupt, or disturb any meeting of citizens assembled to transact or discuss political matters, shall be fined in a sum not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction. Any sheriff, constable, or police officer present at the violation of this section shall forthwith arrest the offender or offenders, and convey him or them, as soon as practicable, before the proper court.

SEC. 67. *Be it further enacted, &c.*, That the court imposing any fine as directed in sections fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, and sixty-five of this act, shall commit the person so fined to the parish prison until the fine is paid: *Provided*, That said imprisonment shall not exceed six months.

SEC. 68. *Be it further enacted, &c.*, That in cases where any oath or affirmation shall be administered by any supervisor of registration or commissioner of election in the performance of his duty as prescribed by law, any person swearing or affirming falsely in the premises shall be deemed guilty of perjury, and subjected to the penalties provided by law for perjury.

SEC. 69. *Be it further enacted, &c.*, That the violation of any provision of the act or section of the act repealed by this act shall not be considered as exempting the persons so offending from prosecution and punishment according to the provisions of said act.

SEC. 70. *Be it further enacted, &c.*, That any person duly appointed commissioner of election, and duly notified by the police-jury of such appointment, who shall fail to attend the election and perform the duties of commissioner as herein provided, except in case of sickness, shall forfeit the sum of one hundred dollars to the parish, to be recovered before any court of competent jurisdiction at the suit of the parish, to be prosecuted by the district attorney or district attorney *pro tempore*, who are hereby directed to proceed to collect such fine when it shall be brought to their knowledge.

SEC. 71. *Be it further enacted, &c.*, That this act shall take effect from and after its passage, and that all others on the subject of election laws be, and the same are hereby, repealed.

(Signed) O. H. BREWSTER,
*Speaker of the House of Representatives.*

(Signed) P. B. S. PINCHBACK,
*Lieutenant-Governor and President of the Senate.*

Approved November 20, 1872.

(Signed) H. C. WARMOTH,
*Governor of the State of Louisiana.*

A true copy:
Y. A. WOODWARD,
*Assistant Secretary of State.*

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No. 127.] AN ACT to repeal act No. 19 of 1873, entitled "An act to amend sections seven, eight, and seventy of an act entitled 'An act to regulate the conduct and maintain the freedom and purity of elections,'" which became a law February 4, 1873, and to revive, amend, and re-enact sections seven and eight of act No. 98 of 1872, entitled "An act to regulate the conduct and maintain the freedom and purity of elections," &c., approved November 20, 1872.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That act No. 19 of 1873, entitled "An act to amend and re-enact sections seven, eight, and seventy of an act entitled 'An act to regulate the
140 conduct and maintain the freedom and purity of elections,'" &c., be, and the same is hereby, repealed.

SEC. 2. *Be it further enacted, &c.*, That section seven of act No. 98 of 1872 aforesaid be, and the same is hereby, revived, amended, and re-enacted so as to read as follows: That each parish in the State, except the parish of Orleans, is hereby fixed as an election-precinct, and the police-juries shall direct what number of polls or voting-places shall be established in each precinct; shall fix the places of holding the election, and appoint commissioners of election for each poll or voting-place. For the parish of Orleans, each ward of the city of New Orleans shall constitute a precinct, and the assistant supervisors of each ward shall fix the voting-places in each precinct and appoint commissioners to hold the election for each voting-place.

SEC. 4. *Be it further enacted, &c.*, That section eight of act No. 98 of 1872 aforesaid be revived, amended, and re-enacted so as to read as follows: That the election at each poll or voting-place shall be presided over by three commissioners of election, residents of the parish for at least twelve months next preceding the day of election, who shall be selected from different political parties, and be of good standing in the party to which they belong, and who shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed for State officers; should only one of the commissioners appointed be present at the hour for opening the polls, he shall appoint another, and both together shall appoint a third, and the commissioners so appointed shall take the oath and perform all the duties of commissioners of election in the same manner as if they had been appointed as provided for regular appointment of commissioners by this act. Any one of the commissioners shall be authorized to administer the oath to the other commissioners.

SEC. 4. *Be it further enacted, &c.*, That all laws or parts of laws in conflict with this act be, and the same are hereby, repealed, and that this act shall take effect from and after its passage.

CHARLES W. LOWELL,
*Speaker of the House of Representatives.*

C. C. ANTOINE,
*Lieutenant-Governor and President of the Senate.*

Approved March 23, 1874.

WILLIAM P. KELLOGG,
*Governor of the State of Louisiana.*

A true copy:

P. G. DESLONDE,
*Secretary of State.*

## APPENDIX TO TESTIMONY TAKEN IN CARROLL PARISH.

EXHIBIT A.—CARROLL PARISH.—S. DUNCAN GLENN, *Notary Public.*

*Statement of votes, poll No. one, election-precinct of the parish of Carroll.*

Statement of votes cast at poll No. one, election-precinct of the parish of Carroll, for senators and representatives, State and parish officers, at the general election held November 4th, 1872, under the provisions of "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved March 16th, 1870.

| Names of persons voted for. | For office of— | Number of votes. |
|---|---|---|
| Antoine Dubuclet | State treasurer | 580 |
| J. C. Moncure | " | 21 |
| Frank Morey | Member of Congress, 5th dist. | 569 |
| W. B. Spencer | " " " " " | 33 |
| * * * * * | * * * * | * |

141 *Statement of votes*—Continued.

| Number of ballots in box. | Number of ballots rejected. | Reasons for rejection of ballots. |
|---|---|---|
| Six hundred and four (604) | One | Registration papers not properly filled out—Henry Washington. |

STATE OF LOUISIANA,
*Parish of Carroll, ss:*

Personally appeared before me, the undersigned authority, David Jackson, E. M. Spann, and T. B. Rhodes, duly appointed and qualified commissioners of election of poll No. one, election-precinct of the parish of Carroll, for the general election held November 4, 1872, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have witnessed the counting of the ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

DAVID JACKSON,
E. M. SPANN,
T. B. RHODES,
*Commissioners of Election, Poll No. 1, Election Precinct of the Parish of Carroll.*

Sworn to and subscribed before me this fourth (4th) day of November, 1874.

T. J. GALBRAITH,
*Deputy Clerk 13th Dist. Court.*

OFFICE OF CLERK OF COURT, PARISH OF CARROLL,
*Providence, La., May 4, 1875.*

I certify that the foregoing is a correct transcript of so much of the original on file in my office as relates to the votes cast for State treasurer and for member of Congress.

Given under my official signature and seal of office this 4th day of May, A. D. 1875.

T. J. GALBRAITH,
*Deputy Clerk*

Supreme court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS,
*May 17th*, 1875.

NICHOLAS BURTON ET ALS. *vs.* CHARLES HICKS ET ALS. } No. 5521. Appeal from the 13th district court, parish of Carroll

Mr. Chief Justice Ludeling delivered the opinion and decree of the court in the words and figures following, to wit:

A motion to dismiss this appeal has been made, on the ground that the certificate to the transcript is signed by the deputy clerk.

The motion was refused for the following reasons:

1st. Because the motion was not filed within three judicial days after the return day (17th An., 21; 18 An., 191; 19 An., 276; 20 An., 30; 21 An., 329; 11 An., 545; 7 N. S., 271).

2d. Because a defect in a certificate would be no cause to dismiss an appeal, the fault being attributable to the officer whose duty it is to make the certificate. (Revised Statutes, sec. 36).

3d. Because a deputy clerk is an officer known to the law and he is authorized to sign certificates. (C. P., 782; 3 An., 247, Downs *vs.* Parkington, 15 La., 33; Bank of La. *vs.* Watson.)

ON THE MERITS.

Seven persons who were candidates on the same ticket for different offices, to wit, Nicholas Burton, for sheriff; M. Dubose, for parish judge; David King, C. E. Shearer, Jackson Snelling, Henry Price, and John Hallsway, for police-jury, instituted this suit against the persons who were candidates for said offices on the other ticket, at the election in Carroll Parish, in November last.

They alleged that the election was null and void, "because of the various irregularities and illegalities, in the appointment of commissioners to hold the election, in the manner of holding it, and frauds committed by the commissioners at the various polling-precincts, and the acts of other persons, interested in the election, in violation of the statutes of the State and of the United States, known as the enforcement act, as follows," to wit: That the commissioners were not selected from the different political parties, nor were they of good standing; that said commissioners did not take the oath prescribed by law, nor did they examine the ballot-boxes before commencing to receive votes.;

That the election in ward No. one was not held at the proper place; that the election in said ward was held in a small room away from the public view of the voters; and a large number of the ballots or votes cast in said ward were not placed in the box in view of the voters, nor taken from their hands by the commissioner receiving the ballots.

That the commissioner, Jackson, who received the ballots, was seen to change several ballots placed in his hands, and deposit in the box tickets other than those handed him by the voters.

That Cain Sartain, a candidate, cast several different ballots at said election at said precinct. That the tally-sheets of the votes cast at said election were not closed and signed by six o'clock the day following the election. That the same were changed after six o'clock on said day and made differently from what they were first made up after the election. *That neither the tally-sheets nor ballot-box containing the ballots cast at said precinct have been deposited in the office of the clerk of the district court, although Daniel Jackson, one of the commissioners, is himself clerk of said court.* They further charge irregularities and fraud at the other precincts of the parish, and pray that the election be declared null and void.

154 And they further pray that, should the court decide that the election held *at wards four and five* was valid, notwithstanding the irregularities of frauds complained of, and that the election was null and void at all the other precincts, that in that event they be declared elected to the various offices for which they were candidates.

The defendants severally filed exceptions, stating that there was an improper joinder of plaintiffs and defendants; that several different plaintiffs were claiming different things from different defendants in the same suit. Moss further pleaded that the court was without jurisdiction *ratione materiæ* to entertain the suit as to his office, that of parish judge, and the candidates for police-jury severally pleaded to this jurisdiction of the court, because the emoluments of the office did not exceed five hundred dollars.

These exceptions were overruled. On the trial, the defendants severally claimed the right to challenge ten jurors, under the act of 1855. This was denied them, and they took a bill of exceptions to the ruling.

If it was ever contemplated that several plaintiffs, claiming different offices, could unite to bring one suit against several defendants, it is manifest from the unambiguous language of the law in regard to contested elections, that each defendant would have the right, which was claimed and refused in the district court. Section 1429 of the Revised Statutes, treat-

ing of the trial of contested-election cases, declares that "in impaneling the jury *each party shall be entitled to ten peremptory challenges*"

Another bill of exceptions was taken to the ruling of the judge *a quo* refusing to permit the defendants to prove by parol what the actual votes were which were cast at every precinct for each candidate. The circumstances under which the defendants offered the parol proof were as follows: *After* the trial had commenced, a rule was taken *on the clerk of the court* to produce the ballot-boxes and tally-sheets, which section 13 of the act of 1873 directs shall be delivered to the clerk. The clerk answered that they were not in his possession, but in the possession of R. K. Anderson, his deputy. A rule was then taken against Anderson, but the coroner's returns show that he could not be found in the parish, and that he had gone to New Orleans. Thereupon the plaintiffs applied for a continuance. In their application for a continuance, they swore that they expected to prove by the production of said ballot-boxes *that the ballots and returns had been so tampered with that no election can be declared in said parish*. They subsequently made another affidavit, in which they state that they expect to prove "by the ballot-boxes and returns * * were not made out and sworn to as the law requires, and *they will not show the same result* as the ballots in the boxes."

To avoid a continuance, the defendants admitted that "the *returns* made out for the last election in the parish were not made out and sworn to as the law requires, and *the ballots in the boxes in ward No. one* will not show the same results as the returns."

It seems to us that if the statements in the affidavits be true, that the ballots and returns in the ballot-boxes called for have been tampered with so as to render them unreliable as evidence, that the result of the election, as ascertained and announced by the commissioners of election at each precinct, might have been proved by the next best evidence in existence.

The *defendants* are not charged with the irregularities or fraud complained of in conducting the election; nor are they charged with having said boxes, nor with tampering with them. Under the circumstances there are no presumptions against the *defendants*, and they had the same right that plaintiffs had to introduce the best evidence which the nature of the case admitted of. But we do not perceive that the refusal of the judge injured the defendants, as the *onus* of proving that the election was null and void, or that they were elected, was upon the plaintiffs, and they have introduced no evidence to establish fraud, illegality, or irregularity at the election, except as to ward No. *one* and ward No. *two*, besides the admissions of defendants made as above stated. But they do not allege or attempt to prove that if the entire vote of wards *two* and *one* were thrown out they would be elected. They only claim that this result would be attained *if all the wards in the parish* except wards No. four and five were rejected, thereby admitting that they were not elected.

As already stated, the only evidence offered by the plaintiff was the admissions aforesaid, and the testimony of witnesses as to what occurred in relation to the election at wards *Nos. one and two*.

The only witness offered by plaintiff who testified in regard to No. 2 is F. F. Montgomery. He says:

"I was at the voting-precinct of ward No. 2 of this parish on the 2d of November last. The tally-list was closed and signed Tuesday night following the election, between eight and ten o'clock. I was a commissioner of election at said precinct. All the tally-sheets and ballots were locked up in the box after counting of the votes. The tally-sheets were not signed that night. I did not sign the tally-sheets at all." On cross-examination he said: "The reason I did not sign the tally-sheets that night was because the commissioners did not think the law compelled them to do so. *It was not on account of any unfairness or irregularity in the election at said polling precinct at the time of closing the polls that I did not sign them.* The tally-list was correct at the time it was made out. We completed the
155 list some time Tuesday night following the election, between ten and eleven o'clock. I won't be positive about the time, but it was after dark. *The election, the counting of the ballots, and the making out of the tally-lists at said precinct, was fair while I was present. There was no frauds or irregularities in the voting or counting of votes and making of tally-sheets at said precinct, so far as I know.* If there had been any, I would have been apt to have known it, for I watched very closely." When recalled he stated: "The commissioners did not, while I was with them, make out a list of all the persons voted for, the offices for which they were voted for, the number of votes received by each, and sign and swear to the same. I never did sign such a list. I don't know that the box containing the ballots and tally-lists was deposited with the clerk of the district court. *We counted the votes and made a record of what each man received, and put* down the names of each candidate, and the offices for which they were voted, and the number of votes each man received. There were three such tally-lists as above described made out by the commissioners. On closing the polls each commissioner swore to the number of votes polled. They did not swear to the returns above described in my presence." It is manifest that no court could hold that the election at that precinct was illegal, null, and void.

In regard to what occurred at ward No. one, the facts, as disclosed by the evidence, appear to be that the commissioners of elections opened the polls at the poor of a small house; that a rail, which was placed across the door to keep the voters from pressing against the table upon which the ballot-box stood, was broken by the pressure of the crowd, and the commissioners found it necessary to receive the ballots at a window of the same house. This

window was between five and a half and seven feet high. Rhodes, a witness, swears the exact height to be five feet nine inches; that when the voter stood at the window he could not see the ballot-box, but he could see the commissioners, and the box was in full view of those who stood a short distance from the window.

It appears the officers of election, and some of the candidates on both sides, were inside the house, near the ballot-box. It further appears that those who desired to handed their ballots, with their registration-papers, to the commissioner, who received them, and that the ballots were deposited in the ballot-box. It appears further that a large number of persons voted by putting their ballots and registration-papers at the ends of sticks, and thus reached over the heads of those who stood between them and the window. The witnesses are not agreed about the number who thus voted. One witness says about 75, and another witness says about one hundred and eleven. D. S. Vinson, a witness, swears as follows: "I observed nothing wrong, except the voting on sticks, and that was a new style to me. Those voting on sticks were standing a distance from the window, and reaching over the heads of others, who were close up to the window. I would have tried to vote in this way myself, if I could have got a stick. Those voting on a stick appeared to be in a hurry to vote."

P. B. Rhodes testified as follows: "I was one of the commissioners of election at the voting precinct No. 1 of this parish, at the last general election. N. Burton was there during the day. I did not hear him make any objections to the way the election was conducted. I heard him say four days after the election that the election was fairly conducted, except, in his opinion, I made a mistake of eleven ballots in counting off, against him; and two persons that were not allowed to vote, he thought would have voted for him, if they had been allowed to vote. He made no objection, at the election, or after the counting of the votes, that I heard. The exact height of the window, where the ballot box was placed, is five feet nine inches. No one was compelled to vote on sticks. Those persons who were anxious to vote for fear of not having time to vote, got sticks and placed their ballots on the ends of them, and handed them up to the commissioner. The smallest man that I know of, could vote by handing his ballot up to the commissioner with his hand."

This testimony is corroborated by S. J. Galbreth, S. P. Austin, W. W. Benham, and E. Meyer, and is not contradicted in any material parts by any witness.

E. M. Sparrow testifies that he was a commissioner at ward No. 1. He says: "Mr. Jackson and myself came to Providence with the first ward box and deposited said box in the clerk's office. The clerk of the court, Mr. Jackson, gave me his receipt for the box. We then went over to Mr. Lockey's office, and I believe Mr. Jackson gave him a copy of the returns. Mr. Lockey then demanded the box, and Mr. Jackson and myself both refused to give said box to him." * * * "I left him and Lockey talking about the box, and I went down-stairs. I saw Mr. Jackson afterward and asked him what he had done with the box, and he told me he had deposited it with Mr. Anderson for safe-keeping and held his receipt for the same. This was Wednesday after the election, about ten o'clock. The tally-lists of ward one was in the box. The ballots were in the box also."

E. Meyer swears he was deputy U. S. supervisor at said precinct. "I assisted in making out a list of the votes cast. The tally-list was closed and signed about seven o'clock Tuesday evening." * * "I left two of the tally-sheets with the commissioners, and I kept one." * * * "I was present from the time of my arrival until closing of the polls; was at the box all the time, except about half an hour at two different times. I watched the progress of the election closely.

156 "Had there been any fraud or malpractice in depositing the ballots in the box, I would have seen it. There was no fraud nor malpractice in the voting, so far as I know of. I did not see Mr. Jackson put in any wrong ballot, except that one voter handed up on a stick two tickets with his registration-paper, which dropped on the floor, and Jackson put in only one of the two; one of the tickets was a red, and one was a white one; and he put in the red ticket." Mr. Jackson swears that "the election was carried on fairer than I ever saw it before. Mr. Burton, the candidate for sheriff, was present during the entire day; he was in the room all the time. I heard no complaint made by him whatever. He was there when we commenced counting the votes, until we closed, and signed one of the tally-lists, and afterward erased his name."

This is the sum and substance of the testimony on the subject of voting with sticks and at the high window, and of the irregularities at said election, except the testimony of the witnesses offered by the plaintiffs in regard to other illegalities. Henry Atkins testifies as follows: "I saw one man cast more than one ballot on that day; he cast three to my knowledge, and I asked him why he did it, and he said he was doing it for some other persons." * * On cross-examination he states: "The man who voted several times was Cain Sartain. Cain Sartain told me they were for other persons; of these ballots the commissioners called names and passed back the registration-papers, and did not call Cain Sartain's name. *I handed in tickets the same as Sartain*, and the commissioners refused until I called their remembrance to Sartain, and then they followed me to do the same. I was a candidate on the opposite ticket."

Cæsar Johnson testified: "I saw ballots handed up very high. I could not see where they went to; with the papers that were returned back, some had money returned with them.

Some had one, some two, and some three bills. I heard two cry out, 'O, Jackson, greenbacks'; and when the papers came back, they had greenbacks with them."

If testimony so absurd and incredible could demand any notice, it is sufficient to say that it is contradicted by nearly every witness who testified in regard to what occurred at that precinct. Mr. Burton, one of the plaintiffs, was at that precinct, and near the box, and he has testified in this case, but he does not say a word about bribery; his testimony is, in substance, that he saw Mr. Jackson change one vote, and that the window was 6 feet 10 inches high when he measured it.

It is evident from the foregoing evidence that the irregularities shown thereby resulted from a want of information on the part of the officers of the election, and that said irregularities did not in any manner affect the result of the election.

In regard to ward two, the irregularities seem to be that one of the commissioners did not sign the returns because he thought it was not necessary, and the correctness of the returns was not sworn to in the presence of all the commissioners, and the counting of the votes was not completed within 24 hours after the election.

At ward one the voting on sticks and at a high window, where the voter had to reach up to hand his ballot to the commissioner, was certainly novel, but the excuse for this is given in the foregoing evidence, and the evidence leaves no doubt on our minds that the ballots were fairly deposited in the ballot-box, that no fraud was perpetrated at the election, and that the votes were honestly counted.

The fact that the ballot-box could not be seen by those voters who stood near the window cannot be a cause to annul the election. In Augustin *vs.* Eggleston, 12 An., 306, this court said: "The mere position of an election-box, without any resulting injury, does not avoid an election."

Now, conceding what the defendants admitted to avoid a continuance, that "the *returns* made out for the election in this parish *were not made out and sworn to as the law requires*, and that *the ballots for ward one will not show the same result as the returns*, can that defeat an election in the parish?

It has been often decided that the failure to comply with the *directory* clauses of an election law will not annul an election. Courts cannot affix to the omission a consequence which the legislature has not affixed (9 An., 577; 10 An., 732; act of 1873, p. 18).

There is an essential difference between the act of voting and the police provisions to secure the evidence of the act. If the votes be deposited the object of the election is attained, and its validity cannot be affected by the non-observance of the directory provisions (13 An., 301). The act of 1873, No. 98, provides for the punishment of those who violate its provisions, and the criminal courts of the State have cognizance of such matters. The law does not authorize the election to be set aside except for fraud, intimidation, violence, or corruption at or before the election, and then only when such fraud, violence, intimidation, &c., had the effect to change the result of the election.

"Errors of judgment are inevitable, but fraud, intimidation, and violence the law can and should protect against" (Cooley's Limitations, p. 621). The same author says: "When an election is thus rendered irregular, whether the irregularity shall avoid it or not must depend generally upon the effect the irregularity may have had *in obstructing the complete expression of the popular will*, or the production of satisfactory evidence thereof.

157 Election statutes are to be tested like other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish, and, except where they specifically provide that a thing shall be done in the manner indicated, and not otherwise, their provisions designed merely for the information and guidance of the officers, must be regarded as directory only, and the election will not be defeated by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared" (618); and it was said in People *vs.* Cook (14 Barb., 257, and 8 N. Y., 67), "that any irregularity in conducting an election, which does not deprive a legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive a benefit from it, should be overlooked in a proceeding to try the right to an office depending on such election. This rule is an eminently proper one, and it furnishes a very satisfactory test as to what is essential and what is not in election laws. And when a party contests an election on the ground of these or any similar irregularities, *he ought to aver and be able to show that the result was affected by them*" (Cooley's C. Lim., p. 619; 13 An., 175).

The plaintiffs do not allege that they were elected; they do not allege or attempt to prove that the irregularities complained of changed the result of the election; and when the defendants offered to prove what the actual vote was at each precinct in the parish, as shown by the count of the votes at the polls, the plaintiffs objected on the grounds that the ballot-boxes were not produced, and this objection was sustained, notwithstanding the facts that the plaintiffs had alleged, in their petition, that the ballot-boxes had not been returned to and kept in the clerk's office, as directed by law, and that plaintiffs had sworn that the ballot-box had been so tampered with and the ballots so changed or altered as to render them unreliable. Judge Cooley says: "If, however, the ballots have not been kept as required by law, and surrounded by such securities as the law has prescribed with a view to their

safe preservation as the best evidence of the election, it would seem that they should not be received in evidence at all," &c. (625; 14 Mich., 320).

The rejection of other evidence, on account of the absence of the ballots, which would not be legal evidence if in court, was certainly very strange.

The conclusion we have come to renders it unnecessary to pass upon the exceptions of the defendants.

It is therefore ordered, adjudged, and decreed that the verdict of the jury be set aside, that the judgment of the lower court be annulled, and that the plaintiffs' suit be dismissed with costs.

*Dissenting opinion of Mr. Justice Morgan.*

The uncontradicted statement of Mr. Farrar, one of the counsel for the appellees in the brief, is, that the record was filed on Saturday; that he sought to examine it on Monday, when he found it had been taken out of the clerk's office, and that it was not returned until more than three judicial days after the return-day. The custom of allowing counsel to take the records of cases pending on appeal from the clerk's office is, in my opinion, a vicious one; but as it has been tolerated by the court, I do not think that it should prejudice a party's rights. The appellee cannot discover what irregularities there are in a transcript unless he has access to the transcript. The ruling of the court, in my opinion, so long as this practice continues to be tolerated, gives to every appellant the power to prevent his appeal being dismissed. He controls the record until the day upon which he is forced by law to file it. He then files it. Under the implied consent of the court, he removes it immediately. He does not return it until three judicial days have elapsed. It may be filled with irregularities and illegalities, and yet the appellee's motion to have it dismissed will not be listened to because he speaks too late. It seems to me that the court which, by its tolerance, permits an appellee to be placed in such a position, should turn a deaf ear to the appellant under such a state of facts, when he says that the motion to dismiss was not made in time.

I do not propose to cavil at the ruling of the majority upon the second and third grounds which they assign for refusing to dismiss the appeal. The questions involved are, in my opinion, too serious to allow their being shuffled off upon mere technicalities.

I prefer to take them as I find them, and to express my opinion upon them, as I think they should be decided upon the principles of law and right.

And for the same reasons I pass over the question as to the misjoinder of parties, the exceptions filed by the defendants, the question of their having been waived by their answers, and the right claimed by them to challenge ten jurors each. It is to be observed that the defendants do not pretend that the election was conducted in strict compliance with the requirements of the law. They deny, it is true, the allegations in the petition, but they only aver that the election was substantially legal and fair in every respect.

158 In my opinion, it was illegal and foul from the beginning to the end. The law provides that it shall be the duty of the commissioners of election to receive the ballots of all legal voters who shall offer to vote, and deposit the same in the ballot-box to be provided for that purpose; the commissioners are to deposit the ballot of each voter in the ballot-box, in full view of the voter himself (Acts 1873, section 9, p. 17). In all cases the vote of the person offering to vote is to be taken *from the hand* of the voter by one of the commissioners of election (section 10). The votes are to be counted by the commissioners at each voting-place immediately after closing the election, and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any bystander or citizen who may be present. These provisions of the law are not only directory, they are peremptory, and they were enacted, I think, in order that the people should be assured a fair ballot, a fair count, and an honest return.

Now, what are the facts? In so far as poll No. 1, at least, is concerned, the commissioners of election occupied a room, the window of which was more than six feet from the ground. It was through this window that the ballots were handed to the commissioners.

The window itself was barricaded with slats moving up and down, some three inches apart. A very large number of the ballots were handed to the commissioners attached by the voters to a long pole; no voter who was on the outside of the room could deposit his own ballot in the box provided for that purpose, or see that it was deposited there. Instances occurred where voters, when they handed up their ballots, called out for "greenbacks" in return, and got them, the greenbacks replacing the ballot on the end of the pole. A majority of the court seem to consider that this portion of the testimony is absurd and incredible, and that it is contradicted by nearly every witness who testified in regard to what occurred at that precinct. I have examined the testimony of every witness whose evidence is in the record, and I do not find it contradicted. If denied at all, it is a negative denial; that is, the witness did not see it. Certainly, witnesses testify that everything was regular; that the election was a fair one, and that everything was conducted properly. But the position of the ballot-box, the manner of voting, &c., is testified to by every witness, and when men tell me that everything was fair, and in the same breath say that two opposing candidates each voted several times, under the pretense that they were voting other person's ballots, and that one did it because the other did, I put no faith in their notions of fairness. And when commissioners of elections, under whose eyes such proceedings were carried on, tel

me that there were no irregularities at their poll, I am forced to say that I do not believe them. A majority of the court seem to think that those were mere irregularities resulting from a want of information on the part of the officers of election.

In my opinion they are criminalities for which they should be punished, and which render their acts void. When the polls closed the votes were not counted according to law.

The ballot-boxes in which the ballots were placed were given to the clerk of the court, their proper custodian. On the trial, plaintiffs obtained a *subpœna duces tecum* upon the clerk ordering him to produce them. He answered that they were not in his possession; that he had given them to R. K. Anderson, a special deputy appointed by him for that purpose. A subpœna then issued to Anderson, the return upon which was that he could not be found. When this return was made, plaintiffs moved for a continuance. Thereupon the defendants admitted "*that the returns made out for the last election in this parish were not made out and sworn to as the law requires, and the ballots in the boxes from ward No.* 1 *will not show the same results as the returns.*" Plaintiffs rested their case. Defendants then attempted to prove the result of the election by parol, and in order to lay a foundation therefor, examined David Jackson, who swore that he had made diligent search for the boxes and returns, but had not succeeded in finding them; that he had looked in the only place where he had any idea they could have been placed; that he had inquired of different parties whether they knew anything about where the ballot-boxes and returns were, and that he had done everything since the commencement of the trial to get the boxes and returns. Now Jackson was the clerk of the court, and was by law the custodian of these ballot-boxes and returns. He had, himself, given them to Anderson. On his cross-examination he says he supposes they were in Anderson's possession, and that he had not asked Anderson for them since the commencement of the suit. Thus it appears that he asked every one about them except the only man in whose keeping they had been put. The possession by Anderson of these boxes was the possession of Jackson, and I think it was trifling with the court to say that he could not produce them or cause them to be produced. There was a process by which the defendants, after his testimony was given, could have forced the production of these boxes. They did not see fit to avail themselves of it, and they were not, I think, entitled to resort to secondary evidence.

Indeed, what object would they have in producing boxes, which, according to their own admissions, would show that the returns were not properly made? And what becomes of their assertion that the election was a fair one in the face of their admission that the ballots in the boxes of ward No. 1 would not show the same results as the returns?

159 In my opinion these admissions destroy the defendants' case. How is the result of any election to be known except by the returns of the proper officers appointed for that purpose? And who can say that a fair election has been held when it is admitted that the ballots cast would not show the same result as the returns?

I am not here contending that every irregularity in the conduct of an election will nullify the election, or that a police law, with regard to the manner in which an election is to be held, if unconstitutional, vitiates the election, which was the question before the court in Sancier's case (13 An., 301). Nor do I contest the principle laid down in Cooley, and cited by the chief justice in his opinion, that election statutes are to be tested like other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish, but I do say that where the law specifically provides that an election shall be held in a particular manner and not otherwise, as, in my opinion, the election laws of this State do, it must be held in accordance with the law, and that if the ballots have not been kept as required by law, and surrounded by such securities as the law has prescribed with a view to their safe preservation as the best evidence of the election, it is impossible to determine who of the candidates before the people were legally elected. Here it is admitted that the requirements of the law were not complied with.

A jury, taken from the body of the people, and selected according to law, proving themselves a portion of the voters of the parish, have declared that there was no legal election in the parish, and the testimony in the record satisfies me that their conclusion was a just and proper one.

I think the judgment of the district court, which sets aside the election, should be affirmed.

Mr. Justice Wyly concurs in this opinion.

A true copy.
[SEAL.]

M. P. JULIAN,
*Dy. Clerk.*

(Indorsed:) 5221. Supreme court of La. Nicholas Burton *et als. vs.* Charles Hicks *et als.* Appeal from the 13th dist. court, parish of Carroll. Certified copy of opinion and decree.

EXHIBIT C.—CARROLL PARISH.—S. DUNCAN GLENN, *Notary Public.*

1. S. P. Bartley.
2. Abbie Richard.
3. Jo. Leddy.
4. Wm. A. Blount.
5. Andrew Hammond.
6. James Leddy.
7. Jasper Hughes.
8. Elias Smith.
9. B. M. Brorder.
10. Arthur Richardson.
11. B. J. Fowler.
12. Sam Hogan.
13. Richd. Rowlett.
14. Geo. C. Benham.
15. John Spinnetti.
16. J. W. Dunn.
17. Griffin Kelley.
18. Ben. Fleming.
19. Baker Smith.
20. Richd. Collins.
21. Anderson Murray.
22. Willis Hamilton.
23. George Green.
24. Chas. Fox.
25. Jerry Travis.
26. Harrison Johnson.
27. A. W. Roberts.
28. Lewis Warren.
28. Ned Richardson.
30. C. Ed. Shearer.
31. Edmund Davis.
160 63. Nelson Harris.
64. Jno. O'Brien.
65. Spencer Garland.
66. Allen Williams.
67. Geo. Washington.
68. Moses Cato.
69. Emmet Williams.
70. Ben. Brit.
71. Joe Robinson.
72. Robt. Shaw.
73. Sylvester Peterson.
74. Alf. Washington.
75. W. D. Ball.
76. James Garland.
77. Wm. Smith.
78. Geo. Graves.
79. Wm. H. Myers.
80. Jack Toliver.
81. Albert Jordon.
82. Cyrus Dorsey.
83. Richard Jones.
84. Wm. Rakestrow.
85. Jacob Watson.
86. W. J. Kersey.
87. Frank Stepney.
88. Reuben Turner.
89. Leroy Townsend.
90. Peter Barker.
91. Jno. Jourdon.
92. Dennis Winston.
93. Frank Aikles.
94. Sam. Johnson.
95. Reuben Young.
96. Jno. Atlas.
97. Henry Phillips.
98. Granville Wilson.
99. Castle Green.
32. Esau Johnson.
33. London Peterson.
34. Zeke Christmas.
35. Henry Anderson.
36. David Katler.
37. Gus. Silvie.
38. Dick Stewart.
39. A. A. Harney.
40. Isaac Stewart.
41. Isaac L. Lewis.
42. Peter Stevens.
43. Jno. Pitts.
44. Edward Russell.
45. Casey Smith.
46. E. J. Delaney.
47. Hugh Laddy.
48. Wm. Davis.
49. Tom Laddy.
50. Alfred Collins.
51. Mat. P. Fisher.
52. Isaac Johnson.
53. Wm. Lee.
54. S. D. Glenn.
55. George Day.
56. Adam Sheppard.
57. Henderson Stephens.
58. Alfred Brown.
59. Fred. Jenkins.
60. Jim Collins.
61. Preston Sanders.
62. Wm. Thomas.
133. King Atlas, sr.
134. Aaron Henderson.
135. Wm. Crenshaw.
136. Robt. Franklin.
137. E. J. Adams.
138. Chas. Franklin.
139. Bohannus Harris.
140. Bud Dickson.
141. Simon Tyler.
142. Sanders Ford.
143. Archie Crenshaw.
144. Sam Lackey, sr.
145. Joseph Price.
146. Alfred Buckner.
147. Jim McCay.
148. Sam Marshall.
149. Luke Williams.
150. Anderson Crenshaw.
151. Peter Maxwell.
152. Silas Shelby.
153. Lafayette Cook.
154. Isiah Kelley.
155. Wm. Huston.
156. George Saunders.
157. Pleasant Harris.
158. Granderson Jones.
159. Oliver Washington.
160. Wm. Odam.
161. Dallas Brown.
162. Thos. Day.
163. Woodford Banks.
164. Kye Nelson.
165. Levi Gardner.
166. Lewis Kelley.
167. Anderson Phillips
168. Manuel Phillips.
169. John Walker.

EXHIBIT C—Continued.

00. Ananias Robinson.
01. Jerry Petri.
02. Manuel Douglass.
03. Alonza Davis.
04. Stepney Gibbs.
05. Bob Lewis.
06. Willis Neal.
07. Paul Ashley.
08. Mat. Waden.
09. Andrew R. Anderson.
10. C. F. Errickson.
11. Nelson Ware.
12. Jno. Roberts.
13. Victor Esclapon.
14. Cozan Kirk.
15. James Strone.
16. John Payne.
17. Wesley Turner.
18. Eli Piles.
19. Henry Ball.
20. Jackson Edwards.
21. William R-y.
22. Jno. Forrest.
23. Reuben Johnson.
24. Henry Turner.
25. R. K. Joyne.
26. Danl. Jones.
27. Webster Brown.
28. Felix Harris.
29. Spencer Hamilton.
30. James Zandy.
31. James Green.
132. Chas. McCaleb.
61 203. Walter Worley.
204. Green Phillips.
5. Henian Henderson.
6. Dan. Parks.
7. Gus. Turner.
8. Jones Mitchell.
9. Miles Perkins.
). Peter Fields.
. Jno. Crawford.
. Henry Aldrich.
. Henry Haywood.
Dennis Smedley.
Bailey Butler.
Squire Thompson.
Richmond Brown.
Wm. Brown.
Joe McClure.
Bob Porter.
Clem Brown.
Alec McGoric.
Lewis Carson.
Thornton Smith.
Joshua Terr.
Henry Williams.
Jerus Hendley.
Jim Collins.
Manuel Bayley.
Dorothy Byrne.
Jas. Walker.
Jack Boyd.
Jas Stevens.
Jos. Dash.
Jas Daniels.
Jack Phillips.
Jer Wade.

170. Geo. Winter.
171. Wm. Atlas.
172. Wash. Vandevere.
173. George Smith.
174. Henry Mercer.
175. Sam. Hurt.
176. Allis Nelson.
177. Wash. Graham.
178. Ben. Daly.
179. David Montague.
180. Lue. Patterson.
181. Warren Jones.
182. Shed. Buckner.
183. James Ware.
184. Ennis Davis.
185. Albert Barnett.
186. Isaac Elliott.
187. Wm. Howell.
188. Richmond Birdsong.
189. Henry Lewis.
190. John Jones.
191. Joe. Robinson.
192. Wm. Douglass.
193. Ned. Banks.
194. N. Houghton.
195. Emanuel McDaniel.
196. E. L. Lorche.
197. Wm. N. White.
198. Fred. Jordan.
199. Reuben Christmas.
200. Henry Grace.
201. Chas. Newton.
202. Steven Generals.
273. Billy Williams.
274. Henderson Stepney.
275. Silas Garner.
276. Geo. Washington.
277. Jerry Briscoe.
278. Annias McClellan.
279. Coter Lewis.
280. Allen Parker.
281. Paul Jones.
282. Jno. Clorax.
283. George Allen.
284. Robt. Adams.
285. Chapman Preston.
286. Toney Brackett.
287. Albert Lee.
288. Henry Thomas.
289. Anthony Pasten.
290. Jerry Key.
291. Hiram Hawkins.
292. Littleton Stewart.
293. Wm. Smiley.
294. Elias Smoot.
295. Wm. Page.
296. Henry Hamilton.
297. Morton Smith.
298. Willis Whiting.
299. Robt. Gilliard.
300. Saml. Ross.
301. Tom B. Overton, jr.
302. James Reed.
303. Dennis Walker.
304. Wm. Kleinpeter.
305. Parker Joniter.
306. Sam. Lackey, jr.
307. Jos. McDonald.

EXHIBIT C—Continued.

238. Theo. Salter.
239. Wm. James.
240. Wesley Onrus.
241. Jno. Smith.
242. Thomas Watson.
243. Wig Ball.
244. David Winter.
245. Shack Brayson.
246. Matt Taylor.
247. Ed. Williams.
248. Anderson Goodman.
249. Louis Karr.
250. Jim Wilson.
251. Ananias Williams.
252. Thos. Crawford.
253. Perry Phillips.
254. Balin Branch.
255. Wm. Minor.
256. Thos. Creecy.
257. Adam Beard.
258. Warren Dobson.
259. Henry Johnson.
260. Wm. Watson.
261. Andrew Knight.
262. Willis Ward.
263. Sam. Matthews.
264. Henry Williams.
265. Josep Jackson.
266. Robert Gardner.
267. Cyrus Randall.
268. Chas. Day.
269. John Gross.
270. Eli Crawford.
271. Isaac Prater.
272. Dennis Wilkinson.
162 343. Jessie Jenkins.
344. Spencer Helm.
345. Jno. Smith.
346. Frank Corter.
347. James Smith.
348. Thos. Stone.
349. Wesley Wilson.
350. Jno. W. Groves.
351. James Jennings.
352. Robert Lownds.
353. Hiram Henderson.
354. Rayford Franklin.
355. Jonas Ceaser.
356. McKinsey Woodson.
357. Andrew Griffin.
358. J. Dobbyns.
359. Wm. Eggleston.
360. Henderson Taylor.
361. Henry Parker.
362. Aaron Morgan.
363. Henry Parks.
364. Chas. Perkins.
365. Saml. Byns.
366. Fielding Gaines.
367. David Williams.
368. Thos. Winston, jr.
369. Peter Alexander.
370. Marshal Harris.
371. Enos Harris.
372. Richd. Adams.
373. Wm. Gardner.
374. Chas. Staples.
375. Lymas Sanford.
308. Cyrus Castin.
309. Caleb Harris.
310. Ben. Rogers.
311. Geo. J. Hook.
312. Wm. Pendleton.
313. Edmund Costers.
314. Henry Franklin.
315. Geo. Keiser.
316. Nathan Smedley.
317. Henry Mitchell.
318. Anthony Wetherspoon.
319. Thomas Word.
320 Abram Haley.
321. Ross Thomas.
322. Anthony Easby.
323. Ma. Jones.
324. Henry Sutton.
325. Mike Tompkins.
326. Ephriam Reed.
327. Wm. Fuqua.
328. Jo. Johnson.
329. George Franklin.
330. Chas. Smith.
331. Richd. White.
332. M. Duborn.
333. Lewis Welton.
334. Wm. Robinson.
335. Wm. Jones.
336. Moses Davis.
337. Chas. Simms.
338. Geo. Stone.
339. Sam. Turner.
340. Houstin Reed.
341. Winston Cowen.
342. Pleasant Holloway.
413. Joe. Ballard.
414. Jeff. Therrell.
415. Jack Watts.
416. Robt. Parker.
417. Harrison Robinson.
418. Hoyt Clements.
419. Wm. H. Barber.
420. Albert Reed.
421. Hiram Dunn.
422. Wm. Haley.
423. Jackson Curry.
424. Harry Harris.
425. Emanuel Harris.
426. James Grant.
427. Jno. Chambliss.
428. Jno. Wilson.
429. Jacob Wore.
430. Jno. Randall.
431. Henry Taylor.
432. King Atlas, jr.
433. Robt. Martin.
434. Ky. Lewis.
435. Phil. Caleb.
436. Thornton Washington.
437. Jno. Miller.
438. Fayette Johnson.
439. Madison Vaughn.
440. Danl. Chase.
441. Wm. Nolan.
442. Jack McDaniels.
443. Robt. Talbert.
444. Richard Henderson.
445. Harrison Hughes.

EXHIBIT C—Continued.

376. Sol. Johnson.
377. Israel Henson.
378. Robt. Reynolds.
379. John Taylor.
380. Peter Harris.
381. Anderson Kennedy.
382. Primus Perkins.
383. Wm. Lewis.
384. Wm. Lewis.
385. Mingo Hopkins.
386. Sam. Goodwin.
387. Jackson Harris.
388. Sol. Mallory.
389. Gabe Bell.
390. Geo. Washington.
391. Thos. Blakley.
392. Robt. Hendricks.
393. Jackson Jones.
394. Moses Harris.
395. Mike Jones.
396. Isaac Jones.
397. Genl. Johnson.
398. John Farwell.
399. A. T. Gipson.
400. Thos. Gardner.
401. Stepney Brown.
402. Wm. Thomas.
403. Bud Sanders.
404. Anderson Harris.
405. Hayden Summers.
406. Sam. Williams.
407. Wm. Freeze.
408. Wiley Dunn.
409. Jo. Williams.
410. Geo. Tyler.
411. Wallace Bowman.
412. Richd. Wright.
163 483. Geo. Carter.
484. Peter Griffin.
485. Isaac Jackson.
486. Peter Biggs.
487. Alex. Dyke.
488. Granville Peters.
489. Chas. Williams.
490. Andrew Karnes.
491. Richard Robinson.
492. Amos Hopkins.
493. Jonas Monroe.
494. Philip H. Hopkins.
495. King Willis.
496. Wm. B. Thomas.
497. Eph. Stewart.
498. Henry Raney.
499. Jno. Robinson.
500. Jerry Edwards.
501. Geo. Johnson.
502. Warren Tolliver.
503. George Williams.
504. Henry Maxwell.
505. Anthony Hurd.
506. G. S. Dorsey.
507. Reason Williams.
508. C. F. Pagh.
509. Wm. Duncan.
510. Peter Harrison.
511. S. A. Lorche.
512. Joseph Brown.
513. W. P. Childress.
514. Peter Turner.
446. Anderson Walker.
447. Green Sellers.
448. Harry Hill.
449. Edward Johnson.
450. Dallas Panel.
451. Chas. Alexander.
452. James Owens.
453. Geo. Jones.
454. Peter Smith.
455. Thos. Minor.
456. S. P. Bernard.
457. Jno. Stockard.
458. Nathan Shelby.
459. Henry C. Smith.
460. Jack Williams.
461. Martin Brows.
462. F. F. Montgomery.
463. F. R. Bernard.
464. Essex Haywood.
465. Joe Murray.
466. Jno. Baptist.
467. Wm. Bonds.
468. Jesse Shelby.
469. Wm. Allcot.
470. Joshua Rice.
471. A. W. Green.
472. Ben. Evans.
473. Wm. Dorsey.
474. Wm. Walton.
475. Moses Giles.
476. Geo. Knox.
477. Henry Wright.
478. Robt. Simms.
479. Saml. Lewis.
480. Wm. Adams.
481. J. G. Miller.
482. Randell Colrille.
553. Jno. M. Jones.
554. Martin Wilbur.
555. Jno. Davenport.
556. Jacob Hall.
557. Wm. Bridges.
558. Alex. Hill.
559. Danl. La Grand.
560. James Jackson.
561. Anthony White.
562. Jack Anderson.
563. Robt. Marshall.
564. Pope Robinson.
565. Geo. Young.
566. C. A. De Franer.
567. Cyrus Chambers.
568. Coleman Tucker.
569. Morris Evans.
570. Alex. Carter.
571. Robt. Gilmore.
572. Thos. Winston.
573. Gabriel Cole.
574. I. N. Kent.
575. Frank Tyson.
576. Jno. Mellon.
577. Lewis Gregory.
578. Jno. Ranson.
579. Jeff. Rogers.
580. Jno. Melton.
581. Aaron Cooke.
582. N. D. Ingram.
583. Simon King.
584. C. M. Pilher.

EXHIBIT C—Continued.

515. Danl. Logan.
516. Miles Brown.
517. James Edwards.
518. D. L. Morgan.
519. Ephraim Williams.
520. Lawson Saunders.
521. Durrel Ellis.
522. John Landener.
523. Moses Jackson.
524. Tom. January.
525. Marshal Kennedy.
526. Edwd. Sparrow.
527. Wm. Riley.
528. D. C. Jenkins.
529. James Howard.
530. Jno. W. McCue.
531. Chas. Henderson.
532. Sike Richardson.
533. Wm. Mason.
534. Henry Brown.
535. Isaiah Johnson.
536. Emanuel Chapman.
537. Jackson Bowers.
538. L. B. Clarkson.
539. Lorrins Perkins.
540. Ed. Dunn.
541. Wm. Parker.
542. Jno. Brackett.
543. Lewis Williams.
544. Ben. Overton.
545. Baxton Hoare.
546. Ki Solomon.
547. Abe Williams.
548. Green Guino.
549. Alex. Armstrong.
550. Danl. Rice.
551. H. C. Dobyns.
552. Hiram Hatcher.
164 623. Elias Burley.
624. S. T. Le Moy.
625. Jno. Wiggins.
626. W. R. C. Lyons.
627. Wm. Williams.
628. B. H. Lanier.
629. T. F. Montgomery.
630. Jno. Stewart.
631. B. Leddy.
632. S. T. Austin.
633. Griffin Storkes.
634. Miles Cormick.
635. Andrew Atlas.
636. John Martain.
637. Edmund Brown.
638. Wash Duncan.
639. John Robinson.
640. Wm. T. Carver.
641. Jason Hamilton.
642. Jordan Robinson.
643. Mat. McAllister.
644. Anthony Manson.
645. Solomon Walker.
646. Wiley Rose.
647. W. L. McMillen
648. F. L. Myers.
649. Jno. A. Grest.
650. Jno. Byrne.
651. Chas. Wright.
652. O. C. Wessoman.
585. Dan. Hawkins.
586. Edward Campbell.
587. Ned Carr.
588. E. S. Wilson.
589. D. H. Webb.
590. Nat Burrell.
591. C. J. Irrant.
592. L. G. Balfood.
593. S. M. Powell.
594. H. Cherry.
595. James King.
596. Geo. Jones.
597. Taylor Hart.
598. J. W. Montgomery.
599. Richd. Lee.
600. James McGuire.
601. R. W. Williams.
602. Henderson Dickson
603. Frank C. Taylor.
604. Wm. Matley.
605. Dan. Moulton.
606. Alex. Harris.
607. Isham Triskand.
608. Wm. Henderson.
609. Garey Hood.
610. Mike Roach, jr.
611. Horace Thomas.
612. Isaac Miller.
613. Ned Richardson, jr.
614. B. P. Shelby.
615. E. H. Davis.
616. Geo. Blackburn.
617. Ed. F. Newman.
618. Mat. Smith,
619. Geo. Harris.
620. Peter Jackson.
621. Golden Williams.
622. Henry Motley.
669. Jerry Waterman.
670. Edward Jackson.
671. Richd. Stewart.
672. Z. S. Malbry.
673. F. M. Hoppin.
674. Henry Douglass.
675. Joseph Craig.
676. I. L. Murry.
677. W. W. Hunter.
678. R. M. Locky.
679. W. D. Childress.
680. Thos. Hamilton.
681. John J. Parit.
682. Alfred Whitfield.
683. Wm. Maguire.
684. W. B. Dickey.
685. Saml. Chapman.
686. C. R. Egelly.
687. Lewis Irwin.
688. Irvin Davis.
689. John Hamilton.
690. Geo. Johnson.
691. Walter West.
692. Aaron Coleman.
693. Peter Davis.
694. Alfred Crenobow
695. John Fitzgerald.
696. J. L. Davis.
697. B. F. Therrel.
698. Wm. Brown.

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653. F. M. Hays.
654. J. A. Delauney.
655. Chas. Hicks.
656. James Woolrich.
657. Henry Day.
658. Major F. Cook.
659. M. J. Groce.
660. David Hall.
661. C. W. Hamilton.
662. Jesse Rossell.
663. M. A. Sweet.
664. Chas. Dields.
665. Lewis Hite.
666. Nat Murfre.
667. Hugh McGuire.
668. Lloyd Davis.
699. W. D. Christian.
700. J. M. Kennedy.
701. W. W. Benham.
702. Saml. Robinson.
703. F. B Watkins.
704. Lewis Mitchell.
705. Simon Lewis.
706. F. M. Melrose.
707. Lewis J. Ritter.
708. J. E. Leonard.
709. J. D. Tompkins.
710. Thos. Johnson.
711. E. C. Manning.
712. Thos. Chapman.
713. Roland Perkins.

STATE OF LOUISIANA, *Parish of Carroll:*

We, the undersigned, duly commissioned and sworn commissioners of election in and for the second ward, parish and State aforesaid, do solemnly swear (or affirm) that the foregoing list of voters, in and for said ward, is true and correct: So help us God.

W. W. BENHAM.
TOM L. MONTGOMERY.
S. L. MURRAY.

Sworn and subscribed to before me this 2d day of November, A. D. 1874.

STERLING T. AUSTIN, JR.,
*Justice of the Peace.*

---

EXHIBIT D.—CARROLL PARISH.—S. DUNCAN GLENN, *Notary Public.*

ROOMS OF GRAND JURY,
*Thursday, December* 10, *A. D.* 1874.

To the Hon. Wade H. Hough, judge of the 13th district court of Louisiana, holding sessions in and for the parish of Carroll:

Your grand jurors, impaneled for the present term of your honorable court, beg leave to submit the following report:

* * * * * * * *

165 Quite a number of irregularities are reported in the conduct of the recent election in this parish, but upon investigation we do not find them to be of such a character as require the action of the grand jury.

A. C. RHOTEN, *Foreman.*

OFFICE OF CLERK OF 13TH JUDICIAL DISTRICT COURT.

STATE OF LOUISIANA,
*Parish of Carroll:*

I hereby certify that the above and foregoing is a true and correct copy of the report of the grand jury so far as it appertains to the election held in this parish on the 2d day of November, A. D. 1874.

Given under my hand and seal of office this 6th day of May, A. D. 1875.

T. J. GALBRUT, *Deputy Clerk.*

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## LEE vs. RAINEY, FIRST CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Certain ballots cast and counted for contestee were misprinted, and it was urged by the contestant that all such ballots should be excluded from the count.

It was held by the committee that the intent and real act of the voters casting such ballots was to vote for the contestee, and that ballots cast for either candidate upon which the names were misspelled should be counted.

The House adopted the report June 23, 1876.

Authorities referred to: American Law of Elections, chap. 7, page 296; Gunter *vs.* Wilshire, first session Forty-third Congress, Report 631; McKenzie *vs.* Braxton.

May 24, 1876.—Mr. John T. Harris, from the Committee on Elections, submitted the following report:

*The Committee of Elections, to whom was referred the contested-election case, Samuel Lee vs. Joseph H. Rainey, from the first Congressional district of South Carolina, make the following report:*

In this case the main question to be determined is, whether 669 ballots bearing "J A S H R A I N E Y," in the county of Georgetown, were intended for and cast for "Joseph H. Rainey," for if those ballots are counted for Joseph H. Rainey, then he has a decided majority, and is duly elected; while, on the other hand, if the same are not counted for him, he is not elected. As this question is clearly decisive of the case, the committee have not deemed it necessary to consider the other questions raised by

the notice of contest and answer. There is a question of law and a question of fact involved. The question of law is, whether the House can look beyond the ballot to ascertain the voter's intent. The committee think it clear, although canvassing-officers charged with purely ministerial duties may not go outside of the ballot, whatever may be the defect in the same, but must make their return upon the ballots as they appear on their face, that the House, as the final judge of the elections, returns, and qualifications of its members, has not only the right but the duty, when a ballot is ambiguous or of doubtful import, to look at the circumstances surrounding the election explaining the ballot, and to get at the intent and real act of the voter.

This will not give the right to contradict the ballot itself, but simply to explain what is uncertain and ambiguous in reference to it. This rule of law has become too well settled to admit of question. (McCrary on Elections, chapter 7, and cases there cited; Gunter *vs.* Wilshire, first session Forty-third Congress, Report 631.)

Such being the law, the remaining question is purely one of fact, viz: For whom did those who cast the ballots "J A S H R A I N E Y" intend to vote and for whom did they vote? What are the facts upon this point? It appears that only two candidates were nominated, viz: Samuel Lee and Joseph H. Rainey. No other persons appear to have been named in connection with the office of Representative to Congress from that district. There is no pretense that any person by the name of James H. Rainey, other than Joseph H. Rainey, was a candidate for that office, and it is not seriously contended by any one that any person who cast the ballot "J A S H R A I N E Y" cast it intentionally for any other than Joseph H. Rainey, the sitting member.

The evidence clearly shows that the ballots printed "J A S H R A I N E Y" were printed for "Joseph H. Rainey," and the fact that such was the case was explained to the voters to whom the tickets were given by the party who had them printed. (Evidence of Joseph Bush, p. 27; Charles H. Sperry, p. 28.) There is no evidence in this case showing that there was at the time of the election any man in the district by the name of James H. Rainey who was eligible to the office of Representative to Congress, or who had ever been spoken of for that office, or that any person did vote for "James H. Rainey," except one Russell Green (p. 41), and he testified "that he did not know that Joseph H. Rainey was running," and then says "that he had made up his mind before going to the poll that he did not intend to vote for Joseph H. Rainey." His evidence is not of such a character as to entitle it to weight, and your committee are far from being satisfied that he ever knew that the name "J A S H R A I N E Y" was upon the ticket he voted. The fact that no person by the name of Rainey other than Joseph H. Rainey was named in connection with the office of Representative to Congress is a fact entitled to the greatest weight in determining the intent of the voter. It is clear that those who voted the ticket did not know or vote for James H. Rainey, as he was not generally known in the district, and we must assume therefore that those who cast the "J A S H R A I N E Y" tickets, if they did not cast them for Joseph H. Rainey, deliberately threw their ballots away. Can we assume that one-fourth of the voters in the county of Georgetown intentionally cast a blank, and that, too, in an election closely contested at the polls, and when it appears that all the ballots cast for "J A S H R A I N E Y" were printed and distributed for "Joseph H. Rainey," the sitting member? Did the 669 voters intend to throw their votes away, or, in other words, to cast blanks? Your committee cannot

come to the conclusion that such was the intent of the voters, or that they did in fact do this. They find the evidence clearly to show that the ballots having the name "J A S H RAINEY" upon them were intended to be for Joseph H. Rainey, and were for him. If this House cannot consider at all the surrounding circumstances attending the election to learn the intention of the voter, then how is it to determine the identity of the person voted for? How will it determine between two men of the same name if it cannot look to the surrounding circumstances to determine who was voted for? The House must, in such a case, certainly look to something besides the face of the ballot; it must inquire into the intent of the voter. It would, indeed, be a singular position for this House to assume that because there are two men bearing the same name as the one voted for in a district, it has no power to determine who was voted for or elected. If it cannot, how can it determine the elections, returns, and qualification of its members? It has always examined into the intent of the voter when it did not clearly appear by the face of the ballot, where it could be done without contradicting the ballot. In the Forty-third Congress, in the case of Thomas M. Gunter *vs.* W. W. Wilshire, the committee used the following language:

"The testimony submitted satisfies the committee that the contestee and the contestant were the only candidates for Congress in that district; that 1,433 of the 'scattering' votes referred to in the governor's certificate as being given for 'Guntee,' 'T. M. Guntee,' 'Thomas M. Guntee,' and 'T. Ross Gunter,' were, in fact, given for Thomas M. Gunter, and should be counted for him; and that one vote, referred to as given for 'S. M. Guntee,' and the 32 given for 'Thomas M. Crenter,' about which no evidence was offered, are not proven to have been cast for Thomas M. Gunter. The testimony on this point is voluminous, but entirely satisfactory, and the 1,433 votes are added by the committee to the credit of the contestant, Thomas M. Gunter. So, also, the 407 votes in Montgomery County, and the 184 votes in Newton County, returned for 'Gunther,' were cast for Thomas M. Gunter; also, the 12 votes in Pulaski County, returned for 'Wilshire,' were cast for the contestee, and should be credited to them respectively."

The question was elaborately considered in the case of McKenzie *vs.* Braxton (Am. L. of E., p. 296), where ballots for E. M. Braxton, Elliott Braxton, and Braxton, and Elliott M. Braxton were all counted for Elliott M. Braxton on its appearing that all the votes were cast for the same person, viz, for Elliott M. Braxton, and this is in accordance with the usual course in cases where it is uncertain for whom the ballot was intended, and it has been made certain by the evidence. The decision of the committee to count these votes for Joseph H. Rainey can be fully sustained upon the ground that Joseph H. Rainey was, on election-day, in the county of Georgetown known by the name "J A S H RAINEY" as well as by the name Joseph H. Rainey. There is evidence that the voters were so informed at the polls; were informed that J A S H RAINEY was the same as Joseph H. Rainey, and there is every reason to believe that the voters so regarded it, and in a criminal case this would be evidence tending to show that he was known by the one name as well as by the other, and upon this evidence the House has not only the right, but is bound, so to find if satisfied of the fact. Your committee believe that great injustice will be done the first district of South Carolina should the House, where there is really no serious question made by any one but that the ballots for "J A S H RAINEY" were intended for Joseph H. Rainey, fail to count them for him. The

first name was abbreviated, and "Jas" printed instead of "Jos.," and there is a suggestion that this was fraudulently done, but the evidence shows it to have been a mistake made by the printer by inserting "A" instead of "O" in the abbreviation Jos.; but if a fraud, will the House, unless compelled so to do, give effect tr such a fraud when committed upon a people many of whom are illiterate and might the more easily be imposed upon by such a fraud? Your committee are of the opinion that whether a mistake or a fraud, it is a question of fact for whom the ballots were cast. And they have no reasonable cause to believe they were cast for any other person than Joseph H. Rainey, and that they were, in fact, cast for him, thereby giving him at least a majority of (628) six hundred and twenty-eight votes. We, therefore, recommend the passage of the following resolution:

*Resolved*, That Joseph H. Rainey, the sitting member, was duly elected a Representative of the Forty-fourth Congress of the United States from the first Congressional district in South Carolina, and is entitled to his seat.

---

## FENN vs. BENNETT.—TERRITORIAL DELEGATE FROM IDAHO.

The Territorial board of canvassers refused to count certain votes cast for the contestant where the prefix "Hon." was printed on the ticket.

It was held that all such votes must be counted.

The tally-sheets for the Congressional vote were not separately kept at some of the voting-places, and the returns were rejected by the board of canvassers for the reason that the votes for Congressional Delegate were not counted by the proper officers designated by law.

It was held that the failure to keep separate tally-sheets of the Congressional vote did not vitiate the election, and the ballots must be counted for the parties for whom they were cast.

The House adopted the report June 23, 1876.

June 5, 1876.—Mr. House, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the case of S. S. Fenn, claimant to a seat in the House of Representatives of the Forty-fourth Congress as a Delegate from the Territory of Idaho, make the following report:*

The returns from the various voting-precincts, as made to the clerks of the boards of county commissioners, the parties to whom the precinct returns were to be made, show that S. S. Fenn, the claimant, received a plurality of 105 votes over T. W. Bennett, the sitting member. The returns made to the State board of canvassers show the same plurality for the claimant. The Territorial canvassers were the secretary of the Territory and the United States marshal of the Territory, who were required to canvass the returns in the presence of the governor of the Territory. The Territorial canvassers refused to canvass the following votes returned, viz: 246 votes given for Hon. S. S. Fenn in Oneida County; 423 for S. S. Fenn, and 87 for T. W. Bennett, in Nez Perces County; also 134 votes given for T. W. Bennett, and 102 votes for S. S. Fenn, in Lemhi County; also 163 for S. S. Fenn, and 23 for T. W. Bennett, in Idaho County. The reason alleged by the Teritorial board of canvassers for rejecting 246 votes for S. S. Fenn in the county of Oneida is that *there* was the prefix "Hon." to said votes. The sitting member, at the

hearing, waived the objection to the counting of those votes from Oneida County, and they are accordingly counted for the claimant. The returns from the county of Nez Perces were rejected by the Territorial canvassers for the reason that the votes of the county were canvassed under the law of 1864, which gave the canvassing of the votes to the clerk of the county commissioners, and two county officers to be selected by the clerk, and not under the act of 1869, which gives the county commissioners jurisdiction to canvass the votes of the several precincts of the county. Although the question as to the proper board to canvass the precinct returns is a very important one for the Territorial canvassers to consider, your committee do not regard it of much importance in coming to a decision in this case, as the question for the House to consider is, who, in fact, received the highest number of votes, and the precinct returns are proved, which very clearly show that the actual vote cast in this county was 423 for S. S. Fenn and 37 for T. W. Bennett; and although the Territorial canvassers acted rightfully in rejecting the returns from this county, as they were not canvassed by the county commissioners, your committee, from the precinct returns, find that 423 were, in fact, given for S. S. Fenn, and should now be counted for him, and 87 votes were, in fact, given for T. W. Bennett, and should be counted for him. The vote of Idaho County was rejected on the ground that the returns for the Delegate to Congress were not on a separate sheet of paper. The law of the Territory, act of December 22, 1864, provides that the clerk of the county commissioners shall make an abstract of the votes for Delegate to Congress on one sheet, the abstract of votes for members of the legislative assembly on one sheet, and the abstract of votes for district officers on one sheet, and the abstract of votes for county and precinct officers on another sheet. The returns from this county had all of the votes for the several officers voted for on the same sheet; but your committee regard the law in this matter as merely directory, and do not find that the vote is thereby vitiated, but count the votes from this county for the parties for whom they were cast. In Lemhi County both the contestant and contestee agree that the votes from this county should be counted, viz, 134 for T. W. Bennett and 102 for S. S. Fenn, as it is clear the votes were intended and actually cast for them. The votes thus counted give the claimant a plurality of 105 votes, and your committee, therefore, recommend the passage of the following resolutions:

1. *Resolved*, That T. W. Bennett was not elected, and is not entitled to a seat in the House of Representatives for the Forty-fourth Congress as a Delegate from the Territory of Idaho.

2. *Resolved*, That S. S. Fenn was elected, and is entitled to a seat in the House of Representatives of the Forty-fourth Congress as a Delegate from the Territory of Idaho.

## ABBOTT vs. FROST.—FOURTH CONGRESSIONAL DISTRICT OF MASSACHUSETTS.

Charges of fraud, the abstraction of ballots, and illegal voting; that the check-lists and the records containing the result of the count of votes in one of the wards were not returned to the city clerk forthwith, as required by law, and were in the custody of unauthorized persons.

A force of workingmen were employed at the navy-yard a short time preceding the election, and discharged the day following.

Votes were cast and counted by persons who were induced to vote by gifts, rewards, and the promise of reward.

It was held that when the votes and returns are out of the legal and proper custody, it must be proven that while illegally held they were not tampered with. In this case the provisions of the statute were totally disregarded, and the vote was excluded from the count.

Where the giving of employment to the voters immediately prior to the election was for the purpose of inducing them to vote for the contestee, and such object was in any manner made known to the voter, and he accepted or continued in such employment after obtaining such information, he thereby became a party to the transaction, accepted its terms, and the onus of showing that he did not carry it out in good faith is on the contestee.

Where it is shown that an elector enters into an agreement or understanding, direct or indirect, for a consideration, to vote a specified party ticket or for a particular candidate, it is fair to presume that he casts his ballot in accordance with such agreement or understanding, and unless the contrary be made to appear, such presumption becomes conclusive.

Majority and minority report submitted.

Minority report rejected July 14, 1876—yeas, 79; nays, 102; not voting, 106.

Majority report adopted July 14, 1876.

Josiah G. Abbott sworn in July 28, 1876.

Authorities referred to: Mass. State Laws, sections 40, 41, 42, 43, chap. 376, acts of 1874; Chaves *vs.* Clever, 2d Bartlett, 467; Boston Election Cases, Malcom *vs.* Parry, Law Reports, 9 C. P., 610; Roger's Law and Practice of Elections, Felton *vs.* Easthorpe, 221; 3d Douglass, Election Cases, 157; Wright *vs.* Fuller, 1 Bartlett, 152; Vallandigham *vs.* Campbell, 1 Bartlett, 223; Oltero *vs.* Gallegas, 1 Bartlett, 177; Van Wyck *vs.* Greer, 2 Bartlett, 631; American Law of Elections, 306, 343, 344; act of 1872, sec. 25 (35 and 36 Vict., C. 33).

June 10, 1876.—Mr. Poppleton, from the Committee of Elections, submitted the following report:

*The committee of Elections, to whom was referred this case, make the following report:*

The fourth Congressional district of the commonwealth of Massachusetts is composed of wards 1, 2, 3, 4, 5, 6, and 9 of the city of Boston, wards 1, 2, 3, and 4 of the city of Chelsea, and the towns of Revere and Winthrop, and the election in question, for member of the Forty-fourth Congress, was held on the 3d day of November, A. D. 1874, in said district.

On the 21st day of November, A. D. 1874, the legally constituted board under the laws of Massachusetts (governor and council) declared that Rufus S. Frost had received a majority of 210 votes, and was duly elected a Representative in the Forty-fourth Congress of the United States from the fourth district of said State. On the 19th day of December, of the same year, the contestant caused to be served upon the

contestee his notice in writing of intention to contest his seat, of which the following is a true copy:

*Notice.*

To RUFUS S. FROST, Esq., *of Chelsea, in the county of Suffolk and commonwealth of Massachusetts:*

I, Josiah G. Abbott, of Boston, in said county of Suffolk, hereby give you notice that I intend to contest your election to the House of Representatives in the Forty-fourth Congress of the United States, you having been declared elected as a member of said House of Representatives from the fourth Congressional district in said commonwealth at the election holden on the 3d of November last passed, and I specify the following grounds on which I shall rely in such contest:

First. That a large number of votes at said election, viz, many more than your whole majority, were counted for you, which votes were never cast by any legal voter in said district. and these alleged votes for you were thus counted in wards 1, 2, 3, 4, 5, 6, and 9 of said city of Boston, in the city of Chelsea, and in the towns of Revere. and Winthrop.

Second. That in the before-specified wards of Boston, and in the city of Chelsea, and in the towns of Revere and Winthrop, at said election, a large number of votes were cast for you by persons having no legal right to vote, and by persons casting more than one vote, and voting many times each, and said votes thus illegally cast were counted for you.

Third. That many votes were cast and counted at said election for you in said fourth Congressional district by persons who were induced to cast said votes by paying, giving, and bestowing upon such voters gifts and rewards, and by promising to pay, give, and bestow to and upon such voters gifts and rewards.

Fourth. That eight persons were appointed by the marshal of the United States, for the district of Massachusetts, as deputy marshals at said election to preserve order at said election in ward 5 of the city of Boston, at least six of whom belonged to the same political party with yourself, and who were active partisans in the canvass for you, one of whom was an employé of the custom-house for the port of Boston, and that these deputy marshals were permitted, during the whole time the votes were being received, sorted, and counted, at said election in ward 5, to be present behind the rails and in the place where said votes were being received, sorted, and counted, having all the time full access to said votes, as well as to the check-lists.

Fifth. That a large number of votes cast for me at said election, in ward 5 and other wards of said city of Boston, by legal voters, were abstracted and removed before they were counted, and votes for you fraudulently put in their place, which were counted for you.

Sixth. That the votes and check-list, and the result of the counting of the votes in ward 4, in said city of Chelsea, at said election, were not returned forthwith by the warden of said ward to the clerk of said city of Chelsea by any constable in attendance at said election, or by any ward officer, as required by law, and, in fact, were not returned to said city clerk until the morning following the election.

Seventh. That a large number of votes were legally cast for me which were not counted, although clearly intended to be votes for me, said votes, some of them, designating my residence as in Chelsea, some of them having no place of residence designated, some of them giving the initials of my Christian name, some of them giving the said initials incorrectly, and some of them, instead of Christian name, using the title of "judge."

JOSIAH G ABBOTT.

DECEMBER 19, 1874.

On January 16, 1875, the returned member had served upon the contestant his answer, as follows:

*Answer*

To JOSIAH G. ABBOTT, *of Boston in the county of Suffolk and commonwealth of Massachusetts:*

I, Rufus S. Frost, of Chelsea, in said county, have received your written notice of your intention to contest my election to the House of Representatives, in the Forty-fourth Congress of the United States, from the fourth Congressional district in said commonwealth, at the election holden on the 3d of November last past, and I have carefully noted the several grounds specified, upon which you propose to rely in such contest.

In answer to your several allegations, I reply that I believe that I was actually and

legally elected to said office, and received the majority of votes at said election which were declared for me.

I utterly deny, upon knowledge and belief, each and singular the several alleged illegalities or irregularities set forth in your notice, and, so believing, shall require the same to be properly proved. And this denial is intended to embrace all the allegations of facts contained in your notice, upon which you propose to rely.

I further notify you that while I claim to have been duly and legally elected as member of the House of Representatives from said district by a majority of all the votes cast, I claim as a fact, and shall introduce evidence to show, that you not only did not receive a plurality of votes actually cast, but the vote declared for you was not legally cast, but many such votes cast for you were illegal.

That, in several of the wards named in your notice, a large number of votes were cast for you by persons casting more than one vote, and voting many times each, and that said votes were counted for you.

Also, that many votes were cast for you and counted by persons who were induced to cast said votes by paying, giving, and bestowing upon said voters gifts and rewards, and by promises to pay, give, and bestow to and upon such voters gifts and rewards.

Also, that many votes so cast and counted for you were cast by persons whose names were improperly and illegally and by fraud placed upon the voting-lists.

Also, that numerous persons, well known as members of your party, had fraudulently and illegally procured their names to be placed upon the check-lists, and having no right to vote at all, cast their votes for you.

Also, that persons, fraudulently and illegally and by corrupt practices, procured themselves to be naturalized, and cast their votes for you against law, and said votes were received and counted for you.

Also, that a corrupt conspiracy has been formed since said election for the purpose of fabricating evidence by falsehood to impeach and invalidate my election.

RUFUS S. FROST.

BOSTON, *January* 16, 1875.

In the State of Massachusetts the necessary qualifications of an elector for member of Congress are, that he be a citizen of the United States; that he be a male of twenty-one years of age and upward; that he shall have resided in the State one year, and within the city or town and Congressional district where he proposes to vote, six months next preceding the election; that he shall have paid a poll-tax assessed upon him within two years next preceding the election (unless exempt); and in all cases where the right to vote was not acquired before May 18, 1857, that he shall be able to write his own name, and to read the Constitution in the English language.

We will take up the contested points upon which proof has been offered in somewhat different order from which the parties have presented them to the committee.

### 1.—WARD FOUR, CHELSEA.

The sixth specification of the notice of contestant sets forth "that the votes and check-lists and the result of the counting the votes in ward 4, Chelsea, at said election were not returned *forthwith* by the warden of said ward to the clerk of said city of Chelsea by any constable in attendance at said election, or by any ward officer, as required by law; and, in fact, were not returned to said city clerk until the morning following the election." It is therefore claimed by the contestant that the whole vote in ward 4 is illegal and should be rejected.

All the laws of the State of Massachusetts on this subject are embraced in sections 40 to 43 of chapter 376 of acts of 1874, viz:

SEC. 40. In all elections in cities, whether the same be for United States, State, county, city, or ward officer, it shall be the duty of the warden, or other presiding officers, to cause all ballots which shall have been given in by the qualified voters of the ward in which such election has been held, and after the same shall have been sorted, counted, declared, and recorded, to be secured in an envelope, in open ward meeting, and sealed with a seal provided for the purpose; and the warden, clerk, and a majority of the inspectors of the ward shall indorse upon the envelopes for what officer, and in what ward the ballots have been received,

the date of the election, and their certificate that all the ballots given in by the voters of the ward, and none other, are contained in said envelope.

SEC. 41. The warden, or other presiding officer, shall forthwith transmit the ballots, sealed as aforesaid, to the city clerk, by the constable in attendance at said election, or by one of the ward officers other than the clerk; and the clerk shall retain the custody of the seal, and deliver the same, together with the records of the ward and other documents, to his successor in office.

Section 42 provides for the preservation of the ballots for a specified time, and authorizes a recount of them by the board of aldermen.

Section 43 provides for the preservation of the check-lists.

This statute seems to have been enacted the same year the election took place, and, as is to be presumed, the object was to render more certain and reliable the returns of the officers of elections generally in the cities of the State, and no one can doubt for a single moment that a strict observance of all of its provisions and directions would render frauds, by tampering with the check-lists and ballots after the closing of the polls (a most convenient mode, and often resorted to for the perpetration of the greatest frauds), almost impossible.

There are six witnesses called whose testimony bears directly upon this subject, and we know of no better way to give force and point to the conclusion at which we have arrived than to set out the testimony in full.

Deposition of Samuel Bassett, called by the contestant (page 86, of record):

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Samuel Bassett. My age is seventy years; reside in Chelsea, Mass.; have for some forty years; am city clerk of Chelsea since April, 1857.

Int. 2. On the day of the election of the Representative to Congress in the fourth Massachusetts Congressional district, on November 3, 1874, how late was your office open to receive returns from the various several wards in Chelsea? State whether or not the ballots and check-list of ward 4, Chesea, were returned to your office on said November 3, 1874.—A. I left my office about a quarter past eleven p. m., but the office was open later than that. I left a man in charge. I left one of the aldermen, one of the councilmen, and the city messenger there. The messenger is my clerk, and has one of the keys of the safe. I was told by the messenger that they staid some fifteen or twenty minutes after I left. He locked up and went home then. The ballots and check-list of ward 4 were not returned on said November 3, 1874.

Int. 3. When were they returned to you, and when were they first in your custody?—A. About seven o'clock the next morning, on the 4th of said November.

Int. 4. Who brought them to you?—A. The clerk of the ward and the police officer who was on duty election-day at the polls in that ward. The police officer was not a constable. The officer brought the ballots and voting-list, the clerk of the ward the returns. They were both together.

Int. 5. Have you with you the returns of that board for Representative to Congress for the fourth Massachusetts district? If so produce them.—A. I have them here, and they are as follows. I will now read the corrected returns: Rufus S. Frost had 575 votes in ward 4; Josiah G. Abbott had 105 votes in ward 4; Rufus S. Frost, of Boston, had 3 votes in ward 4; R. S. Frost, of Chelsea, had 2 votes in ward 4; Josiah G. Abbott had 2 votes in ward 4; J. G. Abbott had 1 vote in ward 4; J. G. Abbott had 1 vote in ward 4; Judge Abbott had 1 vote in ward 4; P. G. Abbott had 1 vote in ward 4. I will now read the original returns: Rufus S. Frost had 581 votes in ward 4; Josiah G. Abbott had 111 votes in ward 4; Judge Abbott had 1 vote in ward 4.

Int. 6. Please read the returns in the other wards of the city of Chelsea.—A. They are as follows—I give the corrected returns: Ward 1, Rufus S. Frost had 342 votes; Josiah G. Abbott had 148 votes; Josiah G. Abbott had 2 votes; Josiah G. Abbott had 1 vote. Ward 2, Rufus S. Frost had 499 votes; Josiah G. Abbott had 197 votes; Abot, of Chelsea, had 1 vote; Samuel Hooper had 1 vote; Josiah G. Abbott had 1 vote; Ruf. Frost, of Chelsea, had 1 vote. Ward 3, Rufus S. Frost had 480 votes; Josiah G. Abbott had 215 votes; Rufus S. Frost had 1 vote; Frost, of Chelsea, had 1 vote; J. G. Abbott had 1 vote; Josiah G. Abbott had 1 vote; Josiah G. Abbott had 2 votes; J. G. Abbott had 1 vote; R. M. Bryan had 1 vote; James P. Farley had 1 vote; William R. Pearmain had 1 vote. I have given them all. There are but four wards in Chelsea.

Int. 7. Please produce the ballots and check-list of said ward 4.

(Put into the case, ballots marked J. S. H., D, check-list, J. S. H., E.)

A. I here produce them.

Cross:

Cross-int. 1. Please state why you left your office on the night of November 3, 1874, before the returns were sent in from said ward 4.—A. It was getting pretty late; and not knowing whether the returns were coming or not, I went home. I had been up till mid night for several nights making up the voting-lists. I was tired, and went home. I supposed the city messenger would stay a while longer and take charge of them if they came.

Cross-int. 2. When the officers brought them to you the next morning what did they say as to the custody of them during the night?

(Objected to.)

A. They said they called at the office. I do not know as they stated the time. My impression is it was about 12 midnight when they came. Finding the door locked, they carried them to the office of the city marshal, and put them in the custody of William P. Daniels, captain of the night-watch. They remained there till the next morning, when they were brought to me.

Cross-int. 3. In what condition were they when brought to you; that is to say, how bound up or secured?—A. The voting-lists were in the same condition as now; to say, securely bound up, and sealed by the clerk of the ward. The ballots were deposited in a box, which was duly sealed by the clerk. The seals on both packages were intact, unbroken.

Redirect:

Int. 1. At what time did you receive the returns from the other wards in Chelsea?—A. I think from 6 to 8 o'clock in the evening, or a little later; all in before 9 p. m. but the returns of ward 4.

Int. 2. About how near your office was the polling-room of said ward 4?—A. Quite a distance; three-fourths of a mile to a mile.

SAML. BASSETT.

Upon request the above-named Samuel Bassett produced and annexed the following papers, marked as follows:

Order for issue of warrant for election, marked J. S. H., F.
Copy of printed warrant for election, marked J. S. H., G.
Original return of ballots for Representative to Congress, marked J. S. H., H.
Corrected return of ballots for Representative, &c., marked J. S. H., I.
Report of committee on elections, &c., marked J. S. H., K.
Return for Representative, ward 1, marked J. S. H., L.
Return for Representative, ward 2, marked J. S. H., M.
Return for Representative, ward 3, marked J. S. H., N.
Return for Representative, ward 4, marked J. S. H., O.

## Deposition of Augustus Andrews, called by contestant:

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Augustus Andrews. My age is twenty-two years. I reside at No. 5 Baldwin Place, Boston; am counselor at law.

Int. 2. On November 3, 1874, did you go to the ward-room of ward 4, Chelsea? If so, at what time?—A. I did, at twenty minutes or quarter of ten o'clock in the evening.

Int. 3. State what you saw, and what took place while you were there.—A. When I went in there were six or eight men present, one or two of whom were police officers. Some of those present were inside of the rails; a few outside. They were doing nothing unless one or two were writing. I asked them if they could give me their figures. Thereupon one of them, going to another desk, gave me the figures—the vote both for Frost and Abbott in that ward. I asked them if they had forwarded their returns. They said, "Yes; they had just sent them down."

Int. 4. Did you see any check-list or ballots in the room while you were there?—A. I did not.

Int. 5. What did you then do?—A. I immediately drove back to the city marshal's office, in Chelsea, and asked a police-officer if he had received the figures of the votes of ward 4. He said he had, and gave them to me. They corresponded to those given to me just previously at the ward-room of ward 4.

Cross:

Cross-int. 1. What were those figures?—A. I cannot tell exactly. I think about 400 or a little more for Frost, and about 150 for Abbott. I do not pretend to have a distinct remembrance of it.

Cross-int. 2. Can you state the names of, or in any way identify, the persons of whom you obtained your information?—A. I cannot.

Cross-int 3. Did you obtain the figures in the other wards that evening?—A. I did, previous to going to ward 4.

Cross-int. 4. And of other places, if any?—A. I received the figures from the whole Con-

gressional district. Winthrop and Revere were the last I received. Ward 4, Chelsea, next to the last.

Cross-int. 5. Did you not make a memorandum at the time?—A. I did.

Cross-int. 6. Is it in existence?—A. It is not.

Cross-int. 7. Did you foot up the returns as you got them? If so, what was the result?—A. I did. My result was 21 majority for Frost.

Cross-int. 8. Can you now state the several wards or towns in which your figures proved incorrect?—A. No; I cannot. There were three or four.

Cross-int. 9. Where is your memorandum?—A. It has been destroyed. It was taken on simple strips of paper, waste paper; it was nothing I cared for, only to know the result.

AUGUSTUS ANDREWS.

## Deposition of Dexter A. Tompkins, called by contestant.

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Dexter A. Tompkins. My age is forty-seven years; resided in East Boston, ward 1, for twenty-five years; am a teacher of music; am now representative to the general court.

Int. 2. Are you acquainted with one E. K. McMichael? What is his employment?—A. I am. He is a resident of our ward. He is an attaché of the custom-house in some capacity. Don't know what.

Int. 3. Did he take an active interest in politics last year (1874), and on which side?—A. He did: on the Republican side.

Int. 4. Did you see him on the evening of November 3, 1874, and have any conversation with him? If so, state the conversation.

(Objected to as irrelevant.)

A. I did see him; had very little conversation with him. It was simply at the closing of the polls in ward 1. I merely gave him an invitation to a supper with the rest of the ward officers. He was an inspector at the election.

Int. 5. When did you see him next?—A. The evening next after election, November 4.

Int. 6. When and where did you see him, and what, if anything, was said by him concerning the returns of votes in ward 4 in Chelsea?

(Objected to as irrelevant.)

A. On the evening of November 4, at the counting-room of Webster's stable in East Boston. There were quite a number present, and he stated that he went to Chelsea and directed or told the ward officers of ward 4, Chelsea, to retain their returns until they had heard from ward 2, Boston. He was questioned by a gentleman present why he did so, and what right had they to withhold their returns after they were made up. His reply was that he made them or directed them to withhold them, and that they did.

Cross:

Cross-int. 1. Was there any intimation or suggestion that any fraud was or was to be practiced in relation to those votes under any circumstances whatever?—A. Not any in my hearing.

Cross-int. 2. Was it not stated in the conversation then and there that ward 2 had the reputation of holding back its returns till the other wards were heard from, and then practicing the fraud of making up the desired vote, and was not the declared object in keeping back the returns of ward 4, Chelsea, to prevent that fraud in ward 2 by making it impossible?—A. There was nothing of the kind in the conversation; nothing whatever. I certainly heard nothing of the kind.

Cross-int. 3. Was the reason for holding back those returns stated at all in your hearing?—A. No; the fact was simply stated.

Cross-int. 4. Do you know whether or not the apprehension had been very frequently expressed that in ward 2, Boston, a fraud would be practiced such as suggested in cross-interrogatory 2, and that it is a matter of common report that frauds of that nature have been practiced in that ward?—A. I know there had been talk in regard to an apprehension of fraud, as it impressed itself on my mind by conversations heard by me. The apprehension was of fraud in the Frost interest. It is a matter of common report that frauds have been practiced in ward 2.

Cross-int. 5. Now state the names of any reputable persons in the city of Boston who expressed to you before election an apprehension of frauds in ward 2 in the interest of Mr. Frost.—A. Mr. Elisha Perry, formerly corner of Saratoga and Marion streets, East Boston; Mr. William Salter—my impression is he lives on Langdon street; Mr. Edward Flannegan I can't think to name the names. The talk was general, and the general feeling seemed to be that by the breaking out of new Frost clubs then they were afraid of undue influence; it was expressed in that way; no direct charge.

Cross-int. 6. Now, sir, if the apprehended frauds in ward 2 were expected to be in the interest of Mr. Frost, can you give any possible reason for hurrying up the returns in that ward and holding back those in ward 4, Chelsea, instead of holding back the returns in ward

2, so as to make that fraud possible?—A. I can give no opinion in regard to that. I can't give the motive of Mr. McMichael in making the statement. I do not know his motive.

Cross-int. 7. Supposing it to be a fact that general apprehension was felt that frauds in the interest of Judge Abbott were to be practiced upon the vote of ward 2, if that vote was withheld until the rest of the vote of the district was in, there would be a motive, would there not, in attempting to withhold from ward 2 the information involved in the other returns?—A. I can conceive of no motive for fraud on either side. There is a pride in getting returns in early from the ward-rooms.

Cross-int. 8. Does anybody pretend that any fraud whatever was practiced in ward 4, Chelsea?—A. Not that I am aware of. Nothing more than the suspicion which arose from the fact of their withholding their returns.

Cross-int. 9. What other gentlemen were present in the counting-room of Webster's stable at the time of the conversation with McMichael, and what was said, if you recollect?—A. I am sure Mr. Benjamin F. Palmer, one of the city assessors, was there; my impression, Joshua Weston, councilman; then quite a number in there coming and going. Mr. Palmer is the only one I remember speaking. (I remained but a very few moments.) He asked Mr. McMichael, as I have said, before I left.

DEXTER A. TOMPKINS.

The depositions of three persons are submitted by contestee, as follows:

Deposition of Ephraim K. McMichael (page 311 of record):

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Ephraim K. McMichael, and my age is 44 years; resided in East Boston for seven years last; am by trade a shipwright; by present employment, superintendent of warehouses of Boston custom-house.

Int. 2. Do you know one Dexter Tompkins, of East Boston?—A. I do.

Int. 3. Is it true or otherwise that you said in his presence that you had notified the officers of any ward in Chelsea to hold back their returns of the vote of November 2, 1874, till the vote of ward 2, Boston, had been heard from?—A. I never made any such statement; there is no truth in it.

Int. 4. Do you remember being in the office of Webster's stable in East Boston, and having conversation on the subject? Be particular.—A. I do. One evening, shortly after election, I met Benj. Palmer and others there; can't say Tompkins wasn't there; and Palmer asked me why they didn't get the returns in sooner from Chelsea. I replied, I suppose the same game would be played on Frost as was played on Burlingame; that was, that ward 2 held back long enough to ascertain how many votes were wanted to defeat Burlingame. This was a joking and jovial conversation; I merely answered Palmer in his way.

Int. 5. State whether or not this was the only conversation held in that place in relation to the return of the votes in Chelsea, to your knowledge.—A. It was.

Int. 6. As a matter of fact, did you have anything to say or to do with those returns, or had you a word or talk with any person, or give a word of advice regarding the same?—A. Not one word to any person, nor had anything to do with the matter.

Int. 7. Did you attend the election and vote in ward 1?—A. I did.

Int. 8. Did you have anything to do with political matters last campaign outside your own ward?—A. No.

Int. 9. State whether Dexter Tompkins has been to you since he testified for the contestant; and what, if anything, he said to you regarding his testimony?—A. He has. He met me at the ferry-boat; said he, I have wanted to see you for two or three days, to tell you I have been up before the board to testify; he would be d—d if he hardly knew what, but it was about what you said about the holding back the returns from Chelsea. I didn't want to go, but was summoned twice; did go. That's all.

Int. 10. So far as you know, was any undue or improper influence used by any custom-house official to control the votes of the employés?—A. No.

Int. 11. If you know or heard of any act done to obtain a solitary vote for Mr. Frost by any illegal or unfair means, state it fully and distinctly.—A. Know and heard nothing of the kind.

Int. 12. Do you know one William Griffin, once employed in the custom-house?—A. Don't know him.

Int. 13. He testified in the case that on the day before election a caucus was held in the custom-house in the interest of Frost, and that you and one Hinds, Maguire, O'Neil, and others were present. State whether this statement of Griffin is true or otherwise?—A. I never attended a caucus in the custom-house in my life; never knew of one there.

Int. 14. State whether you have taken a somewhat active interest in politics in your ward, and what offices you have held there.—A. For the last six years. I have been a member of the ward and city committee for six years, and during that time two or three times supervisor of elections.

*No cross-examination.* EPHRAIM K. McMICHAEL.

## Deposition of James A. Dinning (page 327 of record):

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is James A. Dinning, and my age is twenty-five years; resided in Chelsea all my life; am police-officer two years.

Int. 2. Were you, on November 3, 1874, a police-officer, with the power of a constable, and did you attend the election in ward 4, Chelsea, that day?—A. I was. I did.

Int. 3. State whether you remained until the vote was counted and the ballots were sealed up.—A. I did, and was present all day, and up to 11.45 p. m.

Int. 4. At what time was the count completed and the ballots sealed up?—A. About 11.45 p. m.

Int. 5. Why were the officers so long in counting?—They were busy all the time; can't say why they were so long.

Int. 6. Who was the warden, and what are his politics?—A. Alonzo R. James; can't state positively his politics; understand he is a Democrat.

Int. 7. What are your politics?—A. I am a Democrat; always voted the Democratic ticket.

Int. 8. What was done with the ballots of ward 4 when they were sealed up?—A. They were delivered to me; I carried them to the city-hall (Chelsea); the hall being fastened, I carried them to the city marshal's office. The captain of the night-watch, William P. Daniel, took them, and the next morning I delivered them to the city clerk, the box being in the same condition as when I carried it the night before to the city-hall; the seals were intact.

Int. 9. Who is William P. Daniel, and what are his politics?—A. He is second assistant marshal of the city of Chelsea and captain of the night-watch. He is also a constable. He is a Republican, as far as I know.

Int. 10. So far as you know or believe, was there any intended delay in counting or sealing the ballots in ward 4 that night, or was or not the time employed by the officers in counting the same?—A. There was no delay, so far as I know, and the time was used in counting the ballots, to the best of my knowledge. The tickets were badly split and scratched.

Int. 11. There is no claim or pretense in Chelsea, is there, that any unfairness was practiced in ward 4 at that election?—A. I have heard some. Some claimed on the delay; some that I carried the ballots as I did. The majority of both parties, in my opinion, believe the election fair.

No cross-examination.

JAMES A. DINNING.

## Deposition of Jeremiah Norris (page 328 of record):

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Jeremiah Norris, and my age is thirty-three years. Resided in Chelsea, Mass., about fifteen years, ward 4, Chelsea. Am a clerk.

Int. 2. Did you, at the election of November 3, 1874, hold any office in your ward; if so, what?—A. I did; was clerk of the ward.

Int. 3. Did you perform the duties of that office November 3, and were you present in the ward-room through the day?—A. I did; and was present all day except a half-hour.

Int. 4. Did you assist through the day and evening in counting the ballots?—A. I did.

Int. 5. Who was the warden?—A. Alonzo R. James.

Int. 6. Is he a Democrat or Republican?—A. I think him to be a Democrat, but his politics are not well known to me; he is not an active politician.

Int. 7. Was he present during the day and performing the duties of warden?—A. He was.

Int. 8. Did he superintend the counting of the ballots?—A. The inspector superintended the counting; if any point was to be decided, it was referred to the warden.

Int. 9. At what time did the polls close?—A. Twenty minutes past 4 p. m.

Int. 10. Did you remain after that and assist in the counting of the ballots, and stay until they were sealed up in the box and delivered to the officer to take to the city-hall?—A. With the exception of about fifteen minutes, I was there; helped count the ballots; saw the box after it was sealed up and delivered to the police-officer acting as constable, James E. Dennin.

Int. 11. At what hour in the evening was this work completed?—A. About a quarter to twelve, midnight; wouldn't vary five minutes.

Int. 12. Why was this delay?—A. Because the ballots were badly scratched and it took a long time to count them.

Int. 13. Was there any other reason, or had the vote of ward 2 Boston, anything to do with it, or had any one advised or suggested the keeping back of the returns that day? Answer fully.—A. There was no other reason in fact. During the evening, between 9 and 10 p. m., an inspector (while we were at work counting) told me somebody sent word to keep back the return till ward 2, Boston, had sent in its returns. I spoke to the warden about it. No notice was taken of it. We worked as hard as we could to complete our returns.

Int. 14. Was the election and the vote declared in ward 4 fair in all respects, and was it ever claimed by any person of any party to have been otherwise?—A. The election was fair, and I've heard no one say otherwise.

Int. 15. Give me the name of the inspector referred to above.—A. Haskell B. Smith.

No cross-examination.

JEREMIAH NORRIS.

This testimony, we think, clearly shows that very many of the plainest and most important provisions of the law were recklessly disregarded if not purposely disobeyed, by the officers having in charge said election. The votes of ward 4 were not returned to the city clerk *forthwith*, as was required by the law, but were, upon being sealed and indorsed by the officials, placed in the hands of a police officer, an official unknown to the election statute, and by him taken and placed in the hands of a night-watchman, away from the polling place, and at an entirely different locality from the city clerk's office, he being a person in no way authorized by the law to hold or have the custody of the votes for a single moment, in whose possession they remained until about 7 o'clock the next morning—a period of some seven hours—when the votes again passed into the possession of the policeman, who, accompanied by the clerk of the ward, which is strictly forbidden by the statute, arrived at the office of the city clerk and deposited with him the envelopes containing the votes, which were afterward counted by the board of aldermen and by them certified as the vote of the fourth ward, Chelsea, upon which the governor and council of the State acted officially. We are clearly of the opinion that the provisions of the statute, which have been so totally and unblushingly disregarded in this case, are not merely formal and directory, but vital and essential, in order to render the election fair, and free from fraud, or the suspicion of fraud; for we hold it to be the duty of election officers to so conduct the election, and everything thereunto appertaining, as to as carefully guard against suspicion of or opportunity for fraud as fraud itself. Nothing short of this will satisfy either the spirit or letter of a statute made and enacted to protect and maintain the purity of elections, as was the unquestioned purpose of the law under consideration.

This principle is most fully recognized in the case of Chaves *vs.* Clever (2 Bartlett, 467), and in the case of Gooding *vs.* Wilson, decided in the Forty-second Congress, it is held that no recount of votes should be allowed unless the forms of the law for the preservation of the ballots, &c., have been strictly followed. In this case, in order to retain the vote of the fourth ward of Chelsea, it is necessary to approve of a recount made by the board of aldermen some four days after the day of election, and that, too, when there is no pretense that the provisions of the law have been followed as to the management of the votes, their legal custody, &c., during the night succeeding the election.

Your committee are fully of the opinion that this ought not to be done, and that we would be establishing a dangerous precedent, opening the door wide to the perpetration of fraud, were we to give our approval to a recount of votes under such circumstances. In this opinion we are strongly supported by the authorities.

In the debate in the House of Representatives upon the case last cited Mr. McCrary, chairman of the committee, said:

If the law provides an officer whose duty it is to hold possession of the ballot-boxes and ballots themselves after the polls are closed, I think no recount should ever be allowed, unless it appears that the ballot-boxes and ballots had remained in the custody of that officer during the interval between the election and the recount. That ought always to be one of the prerequisites, and without it there can be neither certainty nor safety.

He further says:

I think another rule must be observed. It must appear that the ballots have been securely kept, that they have not been exposed, and that there has been no opportunity to tamper with them. This ought to appear affirmatively.

In the same debate Mr. Hoar said:

It makes no difference for the purpose of my point whether it (the ballot-box) was there (in an exposed place) for twelve hours or twelve days. Now, I do not claim that there is any evidence here that when the bar-room was left alone in the day-time or in the night-time any person entered it, opened that box, and substituted other numbered ballots for the ballots which it contained. All I have to say is that an adroitness less than that practiced for a less important purpose in many and ordinary cases of crime, robbery, burglary, and forgery, could easily accomplish that result. Now, we know how eager, how unscrupulous, how adroit, in many instances, are the means which are used to affect political contests. It is not the question whether the friends of the very respectable and very able gentleman who claims this seat did, or were capable of doing, such a thing. The question is whether you are willing to turn out a sitting member from this House, whenever hereafter in any district in the country any member may be able to do such a thing, and may have been able to do it without detection? The interests of the sitting member and of the contestant disappear before a question like this, which involves the interests of the American people in the establishment and maintenance of a strict, wise, and safe rule of public policy.

It is not merely a question whether the recount was correct; it is a question whether you know and are sure that the thing counted upon the recount was the same thing that was counted, or which should have been counted, at the time the original count was made. Around the original count the law throws every possible safeguard. It was made in the presence of a large, watchful, and anxious public, &c.

Your committee find from the evidence in the case serious reasons for suspecting that actual fraud was committed in favor of the returned member in this ward. The witness, Augustus Andrews's, testimony, uncontradicted as it is in many important particulars, cannot fail to establish the fact in the minds of all candid men that the result of the election in ward 4, given him on the evening of the election, at the ward-room, differs materially from the vote afterward announced by the board of aldermen. He testified that about fifteen minutes before ten he went to the ward-room of ward 4; that they were not counting votes; that there were no ballots or check-lists in the room; that he asked for the result of the vote, and it was given him; that he asked if they had forwarded their returns, and was told that they had just sent them down; that shortly afterward he called at the city marshal's office, where all returns were sent, asked if the returns from ward 4 had been received, was told they had been, and the same result given as had been given him at the ward room; that the result given was about 400 for Frost and 150 for Abbott. It will be remembered that the vote declared by the board of aldermen was, Frost, 575; Abbott, 105.

The great length of time between the closing of the polls and the hour at which it is claimed the returns were sent to the city clerk's office, one-quarter before two o'clock, election night, is certainly not without suspicion, for it is in proof that other wards in the same city, with more votes to count than ward 4, made their returns to the city hall between six and eight o'clock that evening, and we place but little confidence in the statement made by the witness Norris, that more than seven hours of time was consumed in counting the same kind of ballots, and a less number than was counted in other wards in one-fourth of the time.

The testimony of Tompkins touching the declaration of McMichael, a warm partisan of the contestee, and a custom-house employé, that he had given direction to have the returns of ward 4 kept back, and that it was done, although contradicted by McMichael, when taken in connection with the admission of Norris, the ward clerk, that while they were counting the vote he heard the matter spoken of, is not without significance, and taken with the other facts and circumstances in the

case, presents such evidences of actual fraud as to call loudly for affirmative evidence of the entire absence of such fraud. No such evidence has been furnished. When the votes and returns are out of the legal and proper custody, it must be proven that, while illegally held, they were not tampered with. Notwithstanding this well-recognized rule of law, Daniels, the night-watchman in whose custody the votes and check-lists were during the night after the election, is not called, and no reason is assigned for the omission to call him; he, of all other persons, best knew whether the clerk or any other person, or persons, meddled with the votes, or opened the bundle, or had anything to do with them during his illegal custody; neither was the warden, whose duty it was to seal up the ballots, called; nor either of the three inspectors, and we are therefore left to guess as to the extent of their information and knowledge of the subject under examination. There being no proof *aliunde* of the vote at ward 4, Chelsea, your committee is of opinion that the entire vote must be excluded from the count.

### NAVY-YARD.

The third specification charges, "that many votes were cast and counted at said election for you in said fourth Congressional district by persons who were induced to cast said votes by paying, giving, and bestowing upon such voters gifts and rewards, and by promising to pay, give, and bestow to and upon such voters gifts and rewards." All of which is denied by the contestee. The statutes relating to the offense charged in this specification are as follows:

Whoever, by bribery, or threatening to discharge from his employment, or to reduce the wages of, or by a promise to give employment or higher wages to, a person, attempts to influence a qualified voter to give or withhold his vote in an election, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail or house of correction for a term not exceeding one year, or both, at the discretion of the court. (Mass. Gen. St., ch. 7, § 31.)

If any person shall pay, give, or bestow, or directly or indirectly promise, any gift or reward to secure the vote or ballot of any person for any officer to be voted for at any national, State, or municipal election, the person so offending, upon conviction before the court having jurisdiction of such offense, shall be punished by a fine of not less than fifty nor more than one thousand dollars, or by imprisonment in the house of correction not less than sixty days, nor more than six months, or by both, at the discretion of the court. (Mass. Acts, 1874, ch. 356, § 2.)

The charges in this specification relate to the giving of employment to a large number of voters in the United States navy-yard at Boston, formerly Charlestown, for the purpose of inducing them to vote for the sitting member. The question is new and very important in its character; it touches the very foundation-stone of representative government; of the free and uncontrolled exercise of the elective franchise, and the counting of votes influenced by a consideration. The rules of law which we think should govern in the consideration of this case are embodied in the following declarations:

1. If the giving of employment to the voters immediately prior to the election was for the purpose of inducing them to vote for the contestee, and such object was in any manner made known to the voter, and he accepted or continued in such employment after obtaining such information, he thereby became a party to the transaction, accepted its terms, and the *onus* of showing that he did not carry it out in good faith is on the contestee.

2. If it be shown that an elector enters into an agreement or understanding, direct or indirect, for a consideration to vote a specified party ticket or for a particular candidate, it is fair to presume that he casts

his ballot in accordance with such agreement or understanding, and unless the contrary be made to appear such presumption becomes conclusive.

Ballots thus obtained we hold to be illegal and ought to be disregarded. To count them in the general canvass is to place them on the same footing with the votes cast by the honest, free, and independent voter. To seat a member upon majorities obtained through such influences is to defeat the very object for which the statute was created.

The punishment of the briber and the bribed avails nothing toward purifying the ballot-box; the vote is there all the same, whether punishment be inflicted or not, and if counted, the fraudulent and corrupt purpose for which it was cast is obtained, and the candidate thus securing success is foisted upon the country contrary to the wishes of the legal electors of the district.

The only remedy against such illegal votes is to throw them out and disregard them in the general count or canvass. The establishment of any other rule would render it useless to contest the seat of a sitting member, even in the most flagrant cases of bribery.

This doctrine was fully and clearly recognized in an elaborate opinion by Lord Coleridge, C. J., on a statute bearing great similarity to the law of Massachusetts. (*In re* Boston election cases, Malcom *vs.* Parry, Law Reports, 9 C. P., 610.)

In the further support of this rule the supreme court of Wisconsin say:

In our form of government, where the administration of public affairs is regulated by the will of the people, or a majority of them, expressed through the ballot-box, the free exercise of the elective franchise by the qualified voters is a matter of the highest importance. The safety and perpetuity of our institutions depend upon this.

It is, therefore, particularly important that every voter should be free from any pecuniary influence. For this reason, the attempt by bribery to influence an elector in giving his vote or ballot is made an indictable offense by statute. * * * The payment or promise of money or other valuable consideration for the giving of a vote, no doubt constitutes the offense of bribery, or attempt to bribe, within the meaning of the statute.

Can a vote thus obtained, in direct violation of the statute, be considered a valid or legal vote? If it can, then the very object of the statute, which is that it shall not be so obtained, is defeated.

We are of opinion that such votes are illegal, and that the judge was right in directing the jury to disregard them. This conclusion is sustained by all the authorities, so far as we have been able to find any.

The case of the King *vs.* Isherwood (2 Kenyon, page 202) "was an application for leave to file an information against the defendant, a brewer at New Windsor, for attempting to bribe one Goad, a fishmonger, to vote for Mr. Fox at the late election; when Goad told him he could not vote so, for he had engaged to vote for Mr. Bowles, the defendant offered him $50 if he would go out of town and not vote at all. This was sworn to by Goad and his wife, and positively denied by the defendant." Lord Mansfield, C. J., says:

Any way to obstruct the freedom of elections, whether by bribing to vote, or to forbear to vote, is a very heinous offense, and proper for the animadversion of this court by information; but, as there are other remedies (indictment at common law, and the popular action for £500 on the statute), the court are not bound to interpose, provided the scales hang even, which they do not in this case, seeing here are the oaths of two persons against the single denial of the accused person; therefore, I think the rule ought to be made absolute.

Wilmot, J., says:

The offense was of so heinous a nature as to be truly "*vindice dignus*," and the thunder of this court ought to be launched against it. And he seemed to be of the opinion that, had the charge been supported by *one witness only*, and denied by the defendant, the information ought to be granted.

In Felton *vs.* Easthorpe (Rogers's Law and Practice of Elections, 221), Abbott, C. J.,

Told the jury, if an agent bribes voters with or without the knowledge and direction of his principal, it will void the election; the principal is to that extent liable, but not so in an action for penalties; under the statute in such an action, what is done must be shown to be done with the knowledge and authority of the principal.

Note (A) on pages 221–2, of the same work, the author says:

The principles of agency derived from the transactions of private life cannot be applied with strictness to cases of electioneering agency. A candidate at an election professedly seeks an office of trust for the benefit of the public; the public, therefore, is the party mainly interested, nor is it too much to require that in seeking to obtain such office the candidate should employ trustworthy agents. * * * In elections where the protection of the public interest is the object to be attained, a candidate has no right to complain if he is made to suffer from the misconduct of others selected or allowed by him to act for him.

Newcastle-under-Lyne and Southampton committees both "show that the seat may be avoided for bribery by agents, though without the knowledge of the sitting member."

As to what constitutes agency in elections, the same author says:

As it seldom happens in parliamentary cases, that an express previous authority from the principal to the agent can be proven, it is in general considered sufficient if the fact be established by circumstances arising out of the general features of the case, the conduct or connection of the parties, or by a subsequent recognition of the acts of the supposed agent, or at least by the absence of any disavowal of such acts. Agency is most commonly established by inference from a variety of facts, each of which taken singly may not furnish any conclusive or even material evidence against the party accused; but the whole of them may combine to establish in the fullest manner the connection between the candidate and the person alleged to be his agent in the commission of the offense charged upon him.

On page 260 he says:

But it is said it would be hard to punish the sitting member for misconduct to which he was no party; but it seems a fallacy to consider the avoidance of the election as a punishment of the sitting member. The inquiry is not so much whether *he* is duly elected, but whether the *election itself* is void. It is true, the loss of the seat is the consequence of the election being avoided; but his losing his seat is a circumstance or consequence collateral to the inquiry itself, and to the object of it.

The doctrine that the bribing of voters by the agent or those managing or controlling the election in the interest of a candidate will render his election void, is clearly recognized in 3d Douglass, Election Cases, page 157.

Admitting the foregoing propositions of law to be correct, the only remaining question is, to determine whether the evidence is sufficient to lead the mind to the conclusion that these electors, or any number of them, were given employment for the purpose of influencing their votes.

In a great majority of cases it is impossible to prove a charge of bribery by direct and positive testimony.

From the very nature of the case the only sources from which such testimony can come is from the briber and the bribed, both of whom are criminals. Although, in this case, we must depend, to some extent, upon circumstantial evidence, yet it is so strong in itself, so strengthened and corroborated by declarations of confederates in the fraud, as to exclude all other reasonable theories than that of guilt.

It is established by the evidence that immediately prior to the election in 1874, an increase of more than 300 voters from the fourth Congressional district in Massachusetts was added to the force employed in the navy-yard at Boston.

*It* is clearly shown, by the correspondence here inserted, that the

object of the Navy Department at Washington, and Hanscom, Chief of Bureau of Construction, was to secure a sufficient number of votes to insure the election of the sitting member.

[Private.]

BOSTON, MASS., *Oct.* 23, 1874.

MY DEAR COM.: I wish you would approve requisitions for men to be employed as they may be made until the 1st of Nov. Some fifty additional men has allowed from the Chelsea district, and I suppose some more will be required from Gooch's district. The administration desire the success of Gooch and Frost.

Yours, respectfully,

I. HANSCOM.

Com. E. T. NICHOLS, *U. S. N., Commandant.*

(On envelope:) Revere House, Boston. Private. Com. E. T. Nichols, U. S. N., commandant navy-yard, Boston. Exhibit B, G. M. H.

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NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,
*Dec. 2d*, 1874.

SIR: In examining the pay-rolls under this bureau at the yard under your command for the months of September and October last, it is noticed that the force was largely increased during the latter month.

Will you be good enough to inform the bureau under what orders this increase was made?

Respectfully, your obe't serv't,

I. HANSCOM,
*Chief of Bureau.*

Commodore E. T. NICHOLS, U. S. N.,
*Comm't Navy-Yard, Boston, Mass.*

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NAVY-YARD, BOSTON,
NAVAL CONSTRUCTOR'S OFFICE,
*December 4th*, 1874.

COMMODORE: In obedience to your order of this date, I respectfully report as follows:

Between the 1st and 31st of October last, there was taken on the rolls of this dep'm't by requisition five hundred and eighty-six (586) men.

The employment of these men was authorized by the bureau's orders dated the 7th, 10th, 12 and 16th October, 1874, and they were at work on the new sloop St. Mary's, stowing and piling timber, breaking up the Virginia, docking the Plymouth, receiving stores, shipping material belonging to the Miantonomoh, keeping ships, &c.

Very respectfully,

J. W. EASBY,
*Naval Const., U. S. N.*

Commodore E. T. NICHOLS, U. S. N.,
*Com'd't Navy-Yard.*

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DEC'R 5TH, 1874.

Chief Constructor I. HANSCOM, U. S. N.,
*Chief of Bureau of Constr. & Repairs, Washington, D. C.:*

SIR: I have the honor to acknowledge the receipt of the bureau's letter of the 2d inst., informing me that in examining the pay-rolls of construction at this yard for the months of September and October, it is noticed the force is largely increased during the latter month. Will you be good enough to inform the bureau under what orders this increase was made?

While I may be excused for expressing surprise at this inquiry, I beg leave respectfully to reply somewhat at length and detail, to wit:

The direct official orders I have for an increase of force in October are as follows, viz: First, a telegraphic order from the Chief of the Bureau of Construction, dated October 7th, to employ twenty additional men in construction department, by order of the Secretary; second, a written order from the Chief of Bureau of Construction, dated October 16th, to increase the force in the construction department, for the purpose of completing the ships and boats for the new sloops of war, and for stowing the timber in the yard.

By the report of the naval constructor, accompanying this, it will be seen how many additional men were employed during the entire month, and the nature of their employment. The two orders of the 10th and 12th, cited by Mr. Easby, were for one man each, and I do not deem it necessary to cite them.

That I had every reason to think and believe that the increase which was made in October was fully known to and approved by the bureau, the above-cited orders and the following orders and transactions seem clearly to show.

To go back a little in the order of time, I would say that the increase of force began in September. On the 7th of that month, a communication was addressed to me by the chief of the bureau, directing me to enter the names of seven men on the rolls. On the 24th of the same month a requisition for twenty men was sent in by Naval Constructor Pook. Upon ascertaining that there were no funds to pay this additional force, I declined to approve it. In reply to my inquiry as to why he sent in requisitions for men when he had not the means of paying them, he stated that those particular names had been handed to him by outside parties, with a request that he would require them. On the same day, viz, September 24, I received an official communication from Mr. Pook, informing me that the money "allowed for the present month will be expended Friday night, September 25," upon the receipt of which I issued orders to suspend work in the construction department from the 25th to the 1st proximo. On the 26th of September, I received telegraphic orders of same date from the honorable Secretary not to stop work in the construction department. September 28, I telegraphed to Bureau of Construction to know what money would be allowed for October. September 29, bureau replied in effect, for same force as in September, and make no additions to the rolls. Soon after the 1st of October, Mr. Easby, naval constructor, informed me that he had been approached by outsiders with inquiries as to why the twenty men required for on the 24th of September had not been taken in. I directed him to reply that the requisition had not been, and would not be, approved by the commandant, there being no funds for their payment. Within a few days afterward, viz, October 7, I received a telegraphic order from the Bureau of Construction to employ twenty additional men. These were the men I had twice refused to approve a requisition for. On October 16 an order was issued by the bureau providing for an increase of force, which order has already been cited. Under this order a considerable increase was made, but I am inclined to think that the largest share of the increase was made subsequent to the 23d of October, at which time the Chief of the Bureau was in Boston. On October 25 I received a telegraphic order from the honorable Secretary of the Navy to make no suspension in any department of this yard until further orders, and that money would be furnished on proper requisition.

It is manifest from this that a suspension I had ordered, and its cause, viz, shortness of funds, was known in Washington. On the 4th of November the reduction of force began by my order. The bureau issued its order to reduce on the 5th, while the order of the Secretary, of October 25, to make no suspension until further order (virtually an order to make no change), was not revoked or changed until November 13.

I have been thus full and particular in my reply to the bureau's letter to show that if the increase of force in this yard was unauthorized, the responsibility does not rest with the commandant, as the foregoing recital clearly shows that every effort made by him to prevent an increase and to save money was frustrated by some outside influence more powerful than his own.

Very respectfully, your obedient servant,

ED. T. NICHOLS,
*Commandant.*

It is evident from this extraordinary correspondence that the department at Washington knew of no proper or legitimate reason for the increase, otherwise the inquiry of Hanscom of date December 2, 1874, as to the cause of the increase, would have been unnecessary. There can be no doubt that the political influence of those high in authority was brought to bear to cause the additional employment of men, and that the avowed purpose was thereby to secure the election of the contestee.

It was made against the protest of the commandant at the navy-yard, and every effort on his part to prevent this corrupt increase "was frustrated by some outside influence more powerful than his own." It must be observed that the source from which this influence emanated was the honorable Secretary of the Navy and the Chief of the Bureau of Construction.

Again, it appears that the committeemen and managers of the election in Boston entered heartily into the conspiracy, and exerted all their influence in soliciting and recommending men for employment in the navy-yard, the sitting member himself recommending a large proportion.

In fact, with one or two exceptions, all the persons recommending men for employment were active politicians, who, during the campaign, worked earnestly for the election of the contestee. Their object in se-

curing the increase of employés will more fully appear from the following correspondence:

CUSTOM-HOUSE, BOSTON, MASS.,
SURVEYOR'S OFFICE.
*September* 19, 1874.

Mr. HAINS:

DEAR SIR: The bearer, Mr. Donovan, of ward 2, desires employment in your department. If you can favor him in this direction, you will oblige the undersigned.

Yours, respectfully,

CHARLES H. LEACH.

J. S. H., 6.

BOSTON, *October* 31, 1874.

FRIEND SAMSON: Can you give employment to this man? He is capable of doing good service. I hope I shall not be obliged to ask another favor before election—a few days, that's all.

Yours, respectfully,

CHARLES H. LEACH.

We will use him at the polls Tuesday.

When put on the stand as a witness for contestee (page 247), he testified as follows:

Int. 19. Do you remember the circumstances under which you gave Henry Hartin a letter for employment in the navy-yard—I mean the letter produced in this hearing?—A. I do: William Griffin told me Hartin had been an active member of and worker in his club, and would be valuable on election-day, and would go away unless he got work; therefore I wrote the letter.

*To use them at the polls* was the *avowed purpose* of Leach. Is it not reasonable to suppose that his co-workers, Beeching, Simmons, Marston, McMichael, Frost, the city committee, Wentworth, and others, all of whom were active in recommending men for employment, were working for the same purpose?

Ed. T. Nichols, commandant, in his reply to Hanscom, of date December 5, 1874, says:

The larger share of this increase of employés was made subsequent to the 23d of October, at which time Hanscom, chief of bureau, was in Boston.

Benj. H. Sampson, witness, testifies (page 98):

Int. 46. Were not a great number of persons employed for a very short time before the election and dismissed a very short time after?—A. Yes; quite a number taken on during the last half of October. Discharges commenced in November and continued till the last of the month.

Int. 47. Were not a large number of persons employed about election-time for a period of eight or ten days and then discharged?—A. Yes; a good many.

This evidence shows clearly that the increase in the force was made immediately prior to the election.

On the 4th of November, the day after the election, the reduction of the force began, and in consequence of the shortness of funds was continued until the efficiency of the department was greatly impaired.

Ed. T. Nichols, witness (page 104):

Redirect:

Int. 1. Was not the efficiency of the construction department materially impaired by this forced reduction of the number of employés in November last?—A. The efficiency of that department was decidedly, in my opinion, impaired by the enforced suspension of work, in consequence of the short allotment of money.

Int. 2. Was not this small allotment of money the consequence of the large amount of money used to pay for the increased employment of men in October, 1874?—A. That I could not say positively, though it is my impression.

Recross-int. 2. Has there been any lack of necessary work in any of the departments for an ordinary force since November, 1874, in consequence of the large amount of work performed in September and October last?—A. Work has been slack in all branches of the construction department, owing, as I stated before, to the lack of funds, in proportion to the amount of work done in September and October. There might be considered a deficiency of work subsequently thereto.

Recross-in.. 3. And, owing to this slackness of work, has the force been reduced unusually low, and the expenses made unusually light in consequence?—A. I stated in my previous answer, I believe, that the slackness of work in the various branches of the construction department was in consequence of the limited allotment of money. The force has been reduced unusually low.

It is also apparent that no necessity for the increase existed, as the regular force employed at the navy-yard could have performed all the work that the exigency required.

Ed. T. Nichols, witness (page 194):

Redirect:

Int. 3. Could not the regular force employed at the navy-yard have done all the work required upon the ships which arrived and were in process of construction or repair during he months of September and October last?—A. I think it is very likely they could. Our navy-yard force is not always a constant force, and when speaking of the ordinary force, we mean the force that is ordinarily employed when there is no particular exigency.

Recross:

Recross-int. 1. In answer to the last interrogatory you say you think that "very likely they could": but would that have required their withdrawal from other work necessary or desirable to be performed, and was it therefore in fact desirable to have an increased force?—A. I don't think it would have necessarily withdrawn them. We always endeavor to make one job fit into another, so as to make the work continuous. So far as I know, this system was pursued, and therefore I am unable or unwilling to say there was a necessity for an increase.

Int. 5. What cause was there for the increased employment of men from September 1, 1874, to November 1, 1874?—A. No cause that I know of, except by order of the authorities in Washington. One reason assigned by the Bureau of Construction was various work upon the Vandalia and new sloops of war, and piling and caring for the timber.

Int. 6. Was there really enough work during the period above mentioned to require such increased force?—A. I hardly think there was of essential work, of work that was absolutely necessary to be done. I believe, however, that the entire force was employed in various kinds of work about the yard, some in shops, some in cleaning up the yard.

Int. 11. In your opinion, could not all the work required to be done in the navy-yard during the above-named period have been done by a much smaller number of men than the actual number employed?—A. Yes; I think so.

William B. Splaine, witness (page 111):

Int. 15. Do you know of any particular cause or exigency which required an increase of men in your department in the month of October, 1874?—A. I do not. Previous to October, a great many of the departments in the yard had been working on short time.

A. A. Woodward, witness (page 100):

Int. 7. What was the cause of the increase in the number of employés about November 1, 1874?—A. Can't tell.

Int 8. Was there any sudden increase in the amount of work to be done in the navy-yard at that time?—A. There was a vessel, a school-ship, I believe, brought there to be finished off.

T. J. Marston, witness (page 105):

Int. 24. Was there any real necessity of increasing the number of men in your department during the month of October, 1874? If you say yes, was it other than a political necessity, so called?—A. There was. I should say it wasn't a political necessity.

The evidence further shows, in this connection, that a large number of the employés, in consequence of having no work, were idle a great portion of the time, playing checkers, holding meetings, loafing, &c.

William B. Splaine, witness (page 112):

Int. 3. Who was the foreman of your department in the fall of 1874?—A. Thomas J. Marston.

Int. 4. About how many men were then employed in his department on November 1, 1874?—A. Between forty-five and fifty-five men, as nigh as I recollect.

Int. 5. How many of these men were actually employed on the Saint Mary's while she was at the yard?—A. I should judge, on an average, not more than three or four.

Int. 6. Was this sufficient work to keep the men employed at in your department about November 1, 1874?—A. No.

Int. 7. Were there many men idle about that time?—A. I should judge about half, loafing around, doing nothing; no work for them.

Int. 8. About November 1, 1874, did you go through the various departments in the navy-yard during working hours? If so, please state what you saw.—A. I had occasion to go from where I worked several times to the blacksmith shop, which was quite a distance, and also went to different shops in my department several times. Saw lots of men loafing in every place I went to. Saw men playing checkers during working-hours. Saw men holding a kind of meeting in a cellar under the place where I was at work.

Int. 9. How many men playing checkers; how many looking on?—A. Two playing, eight or ten looking on.

Int. 10. How many men were there at this meeting or caucus of which you have spoken?—A. The cellar was pretty full. I should judge there were between fifty and sixty men.

Int. 11. Did the men employed in the yard seem to be actively employed or otherwise?—A. Otherwise; they seemed to be loafing around, doing nothing; that is, the majority.

Int. 12. While you were in the yard during September and October, 1874, did you see Mr. Rufus S. Frost in your department, and at any time with Mr. Marston, your foreman?—A. I did, two or three times in the shop, inquiring after Mr. Marston. Saw him also with Mr. Marston three times in the shop or office. Saw Mr. Frost going through the yard by the shop several times in his carriage.

Int. 13. State whether or not Mr. Marston, your foreman, was an ardent supporter of Mr. Frost in the Congressional campaign.—A. I should judge he was from what I could hear.

Cross-int. 18. Where was this meeting held of which you spoke, and for what purpose, if you know, and name all persons who were present?—A. I should judge about a week before election; somewhere about there; I don't exactly know the purpose. They were all laborers, as nigh as I could understand. I didn't know them.

Cross-int. 19. At what hour in the day was this, and how long did the meeting hold?—A. It was between the hours of 2 and 4 p. m., and lasted nearly that time.

Cross-int. 20. Describe particularly the place where it was held.—A. In the cellar underneath the iron-platers' shop I worked in.

Cross-int. 21. Were you within hearing of anything that was said; if so, what was said, and did you see anything done; if so, what?—A. I was not within hearing of it. I saw lots of men sitting down and standing round when I went out at back side of the shop.

### E. A. Shuman, witness (page 101):

Int. 6. Did the men employed in the navy-yard have steady work or not?—A. What was there was steady at work.

Int. 7. While you were in the yard, did you see many men idle?—A. I did.

Int. 8. Did you see many men there who did not understand the work about which they were employed?

(Objected to.)

A. I did.

### John H. Roberts, witness (page 117):

Int. 7. Were the men in the iron-platers' department kept constantly busy?—A. Generally, I do not think they were.

**That these men were employed for political reasons, and for the purpose of inducing them to vote for the contestee, is clearly shown from the fact that it was so understood, and was a subject of common talk among them. It was a matter of public notoriety entering into the public prints, and was much read in the papers.**

### Ed. T. Nichols, witness (page 102):

Int. 10. Was it not a matter of public notoriety that the larger part of the men employed during the period above mentioned were employed for political reasons and for the purpose of securing votes for the election of candidates for Congress?—A. I heard a great deal of talk to that effect, and also read much in the papers to the same effect.

### William B. Splaine, witness:

Int. 14. State whether or not it was the common talk among those employed in the navy-yard that they were employed for political reasons and for the purpose of securing their votes.—A. One man in there told me he was employed for the purpose of supporting Mr. Frost. He was president of a Frost club in East Boston. He said he secured a steady job all winter from Mr. Marston for supporting Mr. Frost. He worked about five or six days after the election and was discharged. He told me after he was discharged, feeling displeased about it. In my department it was the common talk that they were employed for political reasons; also all through the yard, among different gangs with whom I had conversation, I heard the same thing.

Cross-int. 22. Can you name one single person, besides Clancy, whom you heard say anything about being hired for political reasons? Give the name and address, if you can, of every such person.—A. I cannot, no more than the general talk of the people around the shop, in the yard, and in the streets also.

Cross-int. 23. Can't you give one single name, if it was so common?—A. Yes; Patrick Sullivan was one man who worked in the yard at the time. Jeremiah Maloney another. John Momtain, and several other men I might mention. Fifty of them, probably.

On the day of the election one Simon McKay, a quarterman in the navy-yard, had charge of the tickets, and was stationed at a convenient place to intercept the employés on their way to the polls.

Int. 2. On November 3, 1874, were you at the Atlantic wharf, East Boston, during the day?—A. I was.

Int. 3. While there, did you, at any time, see one Simon McKay, a quarterman in the navy-yard, Charlestown; and, if so, what was he doing?—A. I did; he was standing at the head of the wharf as I passed out of the gate; he had some ballots in his hand.

Int. 4. What did he appear to be doing with those ballots, or what was he doing?

(First part of interrogatory objected to.)

A. He was standing with the ballots in his hands; I passed out quick in a carriage.

Int. 5. Was it customary at that time for boats containing men from the navy-yard, who resided in East Boston, to land at the Atlantic wharf?—A. Yes.

That these employés voted is verified by the check-lists, put in evidence in the case without objection.

Frank E. Dodge, witness for contestee, swears that he was employed in Marston's department; that the witness Splaine had a steady job of turning block-pins from September 1 until his discharge; that there was constant and necessary work for all the men in that department; that it is not true that the men were idle, playing checkers, holding a caucus or meeting under the machine-shop; that he does not know of any officer or other person in the navy-yard attempting by any means or influence to dictate or control the vote of any employé in favor of any candidate or party.

David Morrill swears he was employed in Marston's department, and there was no lack of work in that department during September or October; that the men he saw were not idle; that no such meeting as the one described by Splaine was held under the machine-shop, neither did the men play checkers during business hours. He never heard of any undue influences being used by any one in the navy-yard to dictate or in the slightest degree interfere with the votes of any employés in the yard.

Charles H. Leach, witness for contestee, testifies:

Int. 11. So far as you know, or have heard or believe, were any improper, illegal, or dishonorable means whatever used by any committee or any other person or persons to influence or control votes in favor of Mr. Frost or the Republican party in that district?—A. To my knowledge there were no such means used. I never heard such means were used, or believed any were.

Int. 12. State whether, so far as you know, any votes were bought or influenced by the use of money, or by promise of work or position, or any other undue influences.—A. I have no knowledge of any such means being used; I don't believe there were.

This witness has certainly forgotten his letter to Sampson (heretofore cited), in which he urges the employment of a man, stating that "he is capable of doing good service. * * * * * We will use him at the polls on Tuesday."

Thomas J. Marston, called for contestee, testifies that he was foreman of the iron-platers' department in the navy-yard; that in hiring or discharging of men he made no discrimination on account of politics, nor did he in any way attempt to influence the votes of men employed in his department. He knew of no caucus or political meeting being held by the men in the navy-yard during business hours, nor of men playing checkers, nor of any influence used by any officer or employé in the

navy-yard by which a single vote was secured to Mr. Frost by the use of money, patronage, undue influence, or promise of reward, or any other false or fraudulent methods.

The evidence of the four last-mentioned witnesses was drawn out principally by leading questions, in the absence of the contestant, and when it was known to them that he had positively declined and refused to be present for the purpose of cross-examination, because the witnesses were not called within the time prescribed by law for taking testimony, and it is only by the consent of contestant that their testimony is considered. But the witness (Marston) had previously been called by contestant, when, on cross-examination by counsel for the contestee, he was asked:

Cross-int. 8. Did you hire any men whatever with reference to securing any votes in the fourth Congressional district?—A. I couldn't say that I did.

Cross-int. 10. So far as you know, was one single vote influenced in favor of Mr. Frost by the circumstance of any voter being hired to work in the navy-yard?—A. Not that I know personally.

When testifying in the absence of the contestant and his counsel, the recollection of this witness was clear, and he was able to give positive and definite answers to the *leading* questions propounded; but when both parties were present with their counsel, his mind seemed somewhat clouded; he was unable to give clear and definite answers to the questions; his responses, "I couldn't say that I did," "Not that I know personally," would imply a doubt or reservation in the mind of the speaker, therefore must be received with that degree of allowance due to such testimony. It must also be remembered in this connection that the witnesses introduced by contestee were employés in the department of iron-platers, over which Thomas J. Marston acted as foreman, and which consisted of only fifty or fifty-five employés, and their evidence relates particularly to that department, while in all the departments of the navy-yard taken together the employés aggregate near fourteen hundred men.

From all the testimony in this case, the committee are forced irresistibly to the conclusion that employment was given to those men as part consideration; and that they entered into and accepted such employment with the full understanding that they were to vote for the contestee, and, by the application of the rules of law heretofore laid down, the votes of all such must be disregarded.

It is a species of bribery. If tolerated and encouraged, strikes at the foundation of republican government, and poisons the very sources from whence all legitimate authority flows. No system of government can long endure where public opinion tolerates such conduct. Its general prevalence must lead to anarchy and bloodshed, and loosen the very ligaments binding society together. It strikes a fatal blow at the social compact. It overturns all just distinctions between honesty and corruption in the delegation of authority to the representatives of the people.

No language can too strongly express our disapproval of the practices indulged in to corrupt the ballot-box at the navy-yard. If the election of members of Congress is made to depend upon the will of the administration, or to be influenced and controlled by its patronage, then indeed are our liberties in danger and the elective franchise a farce. When the administration, through its officers, exercises its powerful official influence by its patronage, or the use of money, to induce electors to vote for its favorites, it *prostitutes* its position to purposes not

warranted by law, and justly merits the condemnation of an indignant and outraged people.

WARD 5, BOSTON.

Your committee has unanimously agreed that a large number of fraudulent and illegal votes were cast for the sitting member in this ward, by persons having no legal right to vote, and by persons casting more than one vote, and voting many times each; that great frauds were perpetrated by the friends of the contestee on his behalf; and, after a careful and full examination of the testimony, which is voluminous, they have agreed that there shall be deducted from the vote of the contestee in said fifth ward one hundred and five votes.

WARD 2, BOSTON.

After a full examination of the testimony touching this ward, which is also quite voluminous, the committee has unanimously agreed to deduct from the vote of the sitting member thirty votes, of the same character, cast by the same class of persons, and in the same way, as the votes deducted from his vote in the Fifth ward, Boston.

*Winthrop.*—In the town of Winthrop your committee unanimously agree that two illegal votes were cast for the sitting member, and should be deducted from his vote in said town.

It is also unanimously agreed that all the votes set forth in the following table shall be counted for the contestant and contestee respectively, the same as if the votes had been cast for them with their full names:

| | Votes. |
|---|---|
| Josiah G. Abbott, of Boston, has | 6,511 |
| Judge Abbott has | 2 |
| Josiah G. Abbott has | 4 |
| Josiah G. Abbott, of Chelsea, has | 5 |
| Abbott, of Chelsea, has | 1 |
| P. G. Abbott has | 1 |
| J. G. Abbott has | 2 |
| Abbott has | 6 |
| J. G. Abbott, of Chelsea, has | 2 |
| Total | 6,534 |
| Rufus S. Frost, of Chelsea, has | 6,721 |
| Benjamin Frost, of Chelsea, has | 1 |
| Rufus S. Frost has | 1 |
| Frost, of Chelsea, has | 1 |
| Rufus S. Frost, of Boston, has | 3 |
| R. S. Frost, of Chelsea, has | 2 |
| Total | 6,729 |

Making the majority for Frost 195 on the original count of votes, instead of 210; your committee are of opinion that these votes should have been counted and allowed in the official abstract, by the board of canvassers.

*Vote corrected.*

| | | |
|---|---|---|
| Whole number of votes cast for Rufus S. Frost as declared by governor and council | | 6,721 |
| To which add (as per above table, odd votes) | | 8 |
| Total | | 6,729 |
| From this number should be subtracted illegal votes in Winthrop | 2 | |
| Illegal votes, ward 2, Boston | 30 | |
| Illegal votes, ward 5, Boston | 105 | |
| Illegal votes, navy-yard | 300 | |
| Votes thrown out, ward 4, Chelsea | 575 | |
| Total to be subtracted | | 1,012 |
| Leaving the number of votes legally cast for Frost | | 5,717 |
| Whole number of votes cast for Josiah G. Abbott as declared by governor and council | | 6,511 |
| To which add (as per above table, odd votes) | | 23 |
| Total | | 6,534 |
| From which subtract vote of ward 4, Chelsea | | 105 |
| | | 6,429 |
| Frost's total vote | | 5,717 |
| Majority for Abbott | | 712 |

The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That Rufus S. Frost was not elected and is not entitled to a seat in the House of Representatives in the Forty-fourth Congress from the fourth Congressional district of Massachusetts.

*Resolved*, That Josiah G. Abbott was elected and is entitled to a seat in the House of Representatives in the Forty-fourth Congress from the fourth Congressional district of Massachusetts.

E. F. POPPLETON.
R. A. DEBOLT.
J. F. HOUSE.
G. M. BEEBE.
JOHN T. HARRIS.
JO. C. S. BLACKBURN.

I concur in the result of the majority report, but not in that part of the report that excludes the votes of ward 4 in Chelsea.

CHARLES P. THOMPSON.

## MINORITY REPORT.

*The undersigned, members of the Committee on Elections, to whom was referred the matter of contest in the case of Josiah G. Abbott against Rufus S. Frost, from the fourth Congressional district of Massachusetts, beg leave to submit the following minority report:*

### SPECIFICATION OF GROUNDS OF CONTEST.

The grounds of contest are seven in number, and are in substance as follows:

1. That a large number of votes at said election were counted for the sitting member, which votes were never cast by any legal voters in said district.

2. That at said election a large number of votes were cast for the sitting member by persons having no legal right to vote, and by persons casting more than one vote and voting many times each, and votes thus illegally cast were counted for the returned member.

3. That many votes were cast and counted, at said election, for the returned member, in said district, by persons who were induced to cast said votes by paying, giving, and bestowing upon such voters gifts and rewards, and by promising to pay, give, and bestow, to and upon such voters, gifts and rewards.

4. That eight persons were appointed by the United States marshal as deputy marshals at said election, to preserve order at said election in ward 5 of Boston, at least six of whom belonged to the same political party as the contestee, and who were active partisans of his in the canvass, one of whom was an employé of the Boston custom-house, and that these deputies were permitted, during the whole time the votes were being received, sorted, and counted at said election in said ward 5, to be present behind the rails and in the place where said votes were being received, sorted, and counted, having all the time full access to said votes as well as to the check-lists.

5. That a large number of votes, cast for the contestant at said election in ward 5 and other wards of Boston, by legal voters, were abstracted and removed before they were counted, and other votes for the contestee fraudulently put in their place, which were counted for him.

6. That the votes and check-list, and the result of the counting of the votes in ward 4, Chelsea, at said election, were not returned forthwith by the warden of said ward to the clerk of said city by any constable in attendance at said election, or by any ward officer, as required by law, and were not in fact returned to said city clerk until the morning following the election.

7. That a large number of votes were legally cast for the contestant which were not counted, although clearly intended to be votes for him.

It will be observed that the first three of the above grounds of contest are directed to the whole Congressional district. It is true that the first two of them name the several voting-precincts, while the third, which relates to the votes cast by employés of the Charlestown navy-yard, *only names the district.* It is matter of grave doubt whether, even where the contestee does not except to the legal sufficiency of the pleading, it ought not to be interposed by the committee and the House, where it is palpably insufficient. The objection to the first and second grounds of contest is not so obvious and glaring as to the third. The third ground of contest cannot be supported either by the statute or by the adjudged cases. Wright *vs.* Fuller, 1 Bartlett, 152; Vallandigham

*vs.* Campbell, 1 Bartlett, 223; Ottero *vs.* Gallegos, 1 Bartlett, 177; Van Wyck *vs.* Green, 2 Bartlett, 631; Am. Law of Elections, §§ 343, 344.)

This question will again be referred to before the conclusion of this report.

ANSWER OF THE CONTESTEE.

1. The contestee denies all the material allegations of the notice of contest.

2. The contestee avers that many persons not qualified voters voted for the contestant; that many persons voted for him more than once each; that many persons were fraudulently naturalized and cast their votes for the contestant, contrary to the law; that many votes were cast for said contestant by persons who were induced to cast said votes by paying, giving, and bestowing on said voters gifts and rewards, and by promises to pay, give, and bestow upon such voters gifts and rewards; and that a conspiracy has been formed since said election for the purpose of fabricating evidence by falsehood to impeach contestee's election.

THE ISSUES RAISED BY THE EVIDENCE.

In the testimony, the grounds of contest are reduced to six.

1. The votes rejected by the officers of election in consequence of the name of the candidate voted for being either only partly set forth, or the Christian name omitted.

2. The legality of the votes cast by C. A. Stevens and Frank Tuckerman, in the town of Winthrop.

3. The election and returns in ward 5, Boston.

4. The election and returns in ward 2, Boston.

5. The election and returns in ward 4, Chelsea.

6. The legality of the votes cast by the employés of the Charlestown navy-yard.

1. *The votes rejected for defect in naming the candidate.*—The evidence shows that there were 31 votes cast on which the name of the person voted for as the candidate for Representative in Congress was designated as follows:

| | |
|---|---|
| For Judge Abbott | 2 |
| For Abbott | 6 |
| For Josiah G. Abbott | 4 |
| For Josiah G. Abbott, of Chelsea | 5 |
| For Abbott, of Chelsea | 1 |
| For J. G. Abbott, of Chelsea | 2 |
| For J. G. Abbott | 2 |
| For P. G. Abbott | 1 |
| Total | 23 |

| | |
|---|---|
| For Benjamin Frost, of Chelsea | 1 |
| For Rufus S. Frost | 1 |
| For Frost, of Chelsea | 1 |
| For Rufus S. Frost, of Boston | 3 |
| For R. S. Frost, of Chelsea | 2 |
| Total | 8 |

It is admitted that Josiah G. Abbott, of Boston, and Rufus S. Frost, of Chelsea, were the only persons who were candidates for election to

Congress in this district at the election held in November, 1874. There can be no serious doubt that the votes above referred to were intended to be cast for them. It was not claimed by either party on the argument that those votes should be excluded from the count in settling the contest in this case. We therefore agree with the majority of the committee, that the 23 votes above mentioned should be counted for Josiah G. Abbott, of Boston, and the 8 votes above mentioned should be counted for Rufus S. Frost, of Chelsea.

| | |
|---|---|
| The majority returned for Mr. Frost is | 210 |
| To this add the above vote allowed him | 8 |
| Making his vote | 218 |
| Deduct therefrom the above vote allowed Abbott | 23 |
| And it leaves Frost's majority | 195 |

2. *The two votes in Winthrop.*—The contestant contests the legality of the votes cast by Charles A. Stevens and Frank Tuckerman at the election in the town of Winthrop. The law of Massachusetts (Stat. 1874, chap. 376, § 6) permits a person who is not assessed on the 1st day of May of any year to be assessed upon presenting to the assessors, *on or before the 15th day of September, a written application*, containing a true statement of his taxables, and satisfying them that he was on the 1st of May liable to be assessed in the town in which he makes the application. The list of persons thus assessed must, by the same statute, be deposited with the city or town clerk *on or before the 1st day of October.* In order to be a legal voter at any election, a person must, in addition to possessing the other legal qualifications of an elector, have paid a poll-tax, *legally assessed* upon him, in the State within two years previous to the election at which he claims to vote.

The right of these two men to vote was challenged on the grounds—1. That they were not residents of the State and town where they offered to vote, as required by law; 2. That they had not paid any poll-tax legally assessed upon them in the time and manner provided by law within the two years next preceding the election at which they offered to vote. They took the required oath and each was permitted to and did vote for the returned member. In our judgment there is no sufficient evidence to overcome their declarations on oath, when challenged, that they were residents of the town of Winthrop, so as to be eligible to vote if otherwise qualified. They were young unmarried men. Their residence was largely a matter of intention. It seems to us that there is no evidence which rebuts their sworn declarations on the question of residence.

The other question is one which involves no inquiry into intention. Their application for assessment was made upon the 2d of November, 1874, and they were both assessed upon that day and not before. Their names were put upon the list of voters when they presented themselves to vote. To hold that such assessment and payment of poll-tax were a substantial compliance with the statute, would operate to defeat its obvious purpose. It is suggested that these votes ought not to be struck off, because they were allowed to vote in accordance with the universal usage in that town, permitting persons to be assessed, pay the tax, and vote, as these two men did. The sufficient answer is that it is our duty to ascertain and apply the law as we find it. If the usage exists and its wisdom commends it to the legislature of that commonwealth, it will doubtless be enacted into law. Then only can it be successfully

invoked as a rule for our decision. For this reason we agree with the majority in striking off the votes of these two men, thus reducing Frost's majority to 193.

3. *Ward 5 in Boston.*—The specific charges of fraud contained in the notice of contest, relating to this ward, have been set forth in a preceding part of this report, and need not here be repeated. These charges of fraud are resolved by the testimony into two:

1. Was there a conspiracy formed in this ward for the purpose of committing frauds in the interest of the returned member?

2. Was any fraud actually committed in this ward in the interest of the returned member? If so, what is its character and extent?

The contestant produced two witnesses to establish the existence of a conspiracy to commit frauds on the election in the interest of the returned member. These witnesses are George A. Galbraith and John R. Stewart. They do not claim that the returned member participated in their schemes of fraud. The story of these men seems almost incredible in its turpitude. It can subserve no valuable purpose to set out their testimony or to enter upon any analysis of it. It is sufficient for our purpose to state that their own admissions under oath show them to be scoundrels of the vilest type. Their career in crime embraces nearly all the years of their manhood. Their congenial places of resort are the haunts of shame and crime. With utter shamelessness they boast of their part in this pretended conspiracy. They clothe themselves with infamy as with a garment. The story of these conspirators cannot, uncorroborated, be taken as true, without violating one of the most wise and salutary principles of law. They not only lack all corroboration, but, on the contrary, they are contradicted, upon every material fact testified to by them, by Thomas J. Calahan, Patrick G. White, Robert W. Murphy, and Edward Stevens, whom they claimed to be their fellow-conspirators. No reasonable doubt can be entertained that George A. Galbraith and John R. Stewart, to the other crimes which they freely acknowledge they are guilty of, have superadded the crime of willful and deliberate perjury in their testimony in this case.

### ALLEGED FRAUDULENT VOTES.

The evidence shows that there was a large number of persons whose names appeared on the voting-list and were checked by the election-board to show that the persons named had voted. The number whose names are claimed to have been thus checked amounts to ninety. Persons who swear that their names are the same as those checked on the list as having voted, and that they are residents of ward 5, Boston, are produced, and testify that they did not vote at said election. This is by no means conclusive evidence of fraud. There may have been more than one legal voter in said ward having the name voted on. In addition to these, there are forty-one more persons whose names were checked as having voted at said election, who could not be found in the ward, after diligent search made in about two months after the November election. Of these forty-one persons, the names of twenty-one could not be found on the assessor's list of tax-payers resident in said ward.

After careful and anxious examination of the whole testimony affecting the vote in this ward, the committee agree that there should be struck from the vote returned for Mr. Frost 105 votes. The minority agree to this as a compromise. They do not believe that fraud was shown as against the party friends of the returned member. The evidence failing to explain how these apparent irregularities occurred, the

minority yielded, to avoid a fruitless contest. This ward gave Mr. Frost 379 votes and Mr. Abbott 353. After it is purged as above agreed upon, the vote would stand, for Mr. Frost 274 and Mr. Abbott 353. Deducting from the majority conceded Mr. Frost after the corrections and deductions heretofore made, which is 193, the 105 votes struck from his vote in ward 5, and his majority is 88.

4. *Ward 2 in Boston.*—The contestant claims that 84 votes should be struck from the aggregate vote of 517 returned for Mr. Frost in this ward. This ward lies in closer proximity to the navy-yard than any other in this Congressional district. It is claimed that one William Griffin was the principal instrument in the hands of the custom-house officers of Boston in organizing in this ward a Frost club, composed of about 200 persons, of whom about 50 were legal voters and about 150 were not voters; that the purpose of this organization was to enable its members who were not lawful voters to vote at the November election. It is claimed that Griffin, and other persons who are produced to swear to the perpetration of fraud on the election, did so because of a quarrel with their employers. The testimony to impeach the vote in this ward comes from vicious and criminal scources. Much of it is manifestly false, and little of it seems worthy of consideration. Griffin had been employed in some menial capacity about the Boston custom-house, and being discharged for cause, was ready to injure his former friends. The officers in charge of the custom-house are made the especial objects of his calumnies. It can serve no useful purpose to analyze the testimony of Griffin and demonstrate its falsity; for no one will seriously deny, after reading his testimony, that he is a fit companion for Galbraith and Stewart. One fact ought to be mentioned, and that is that the groundwork of his story rests upon the large number of persons who he says were not voters who were members of the club above mentioned. He testified that the original book in which the members' names were signed had been carried away election night, and he did not know where it was. *Bernard Clancy testified that after election he repeatedly saw that book at William Griffin's house.* Idnes Healy testified that he had lived in that ward thirty-seven or thirty-eight years; that he took the United States census in that ward in 1870; that he had been assessor there for seven years, including the year 1874; that he had been a member of the club in question, and personally knew most of the members to be voters; that he had examined a partial list of the members, to the number of 108, and found they were all voters. It is manifest that the destruction or concealment of the book containing the members' names was a part of the scheme of villainy practiced by Griffin. Nor do the counsel for the contestant seem free from criticism in regard to the list of members belonging to this club.

We do not deem it important to go into the testimony any further, as the majority of the committee agree with the minority to compromise the questions involved by striking off only 30 votes in this ward from Mr. Frost's vote as returned. We desire to repeat that we do not believe that Mr. Frost or his friends are proven to have practiced any fraud upon the election in this ward, but it is believed that without their privity some fraudulent voting occurred, and the number is fixed at 30 by the majority and minority alike yielding to effect a compromise as to the contested votes in this ward. His vote was returned as 517. Deduct 30, and it leaves his vote in this ward, after it is purged, 487. Deducting the 30 votes from the 88 majority above given Mr. Frost, and it leaves his majority 58.

5. *Ward 4 in Chelsea.*—The contestant urges the rejection of the

entire poll in ward 4, Chelsea. The ground of rejection is thus stated in his notice of contest:

Sixth. That the votes and check-list and the result of the counting of the votes in ward 4 in said city of Chelsea at said election were not returned forthwith by the warden of said ward to the clerk of said city of Chelsea, by any constable in attendance at said election, or by any ward officer, as required by law, and, in fact, were not returned to said clerk until the morning following the election.

It is further alleged by the contestant that a large number of votes at said election, viz, more than the contestee's whole majority, were counted for him, which votes were never cast by any legal voter in said city of Chelsea; and also that in said city of Chelsea a large number of votes were cast for the contestee by persons having no legal right to vote, and by persons casting more than one vote at said election, which were counted for the contestee; and also, that, in said city of Chelsea, a large number of votes were legally cast for the contestant, some of said votes designating his residence as in Chelsea, some of them having no place of residence designated, some of them giving the initials of his Christian name, some of them giving the initials incorrectly, instead of the Christian name, using the title "Judge." The provisions of the statute of the commonwealth applicable to the returns in ward 4, in the city of Chelsea, are found in sections 40–43 of chapter 376 of acts of 1874:

SEC. 40. In all elections in cities, whether the same be for United States, State, county, city, or ward officer, it shall be the duty of the warden or other presiding officers to cause all ballots which shall have been given in by the qualified voters of the ward in which such election has been held, and after the same shall have been sorted, counted, declared, and recorded, to be secured in an envelope, in open ward meeting, and sealed with a seal provided for the purpose; and the warden, clerk, and a majority of the inspectors of the ward shall indorse upon the envelope for what officers and in what ward the ballots have been received, the date of the election, and their certificate that all the ballots given in by the voters of the ward, and none others, are contained in said envelope.

SEC. 41. The warden or other presiding officer shall forthwith transmit the ballots, sealed, as aforesaid, to the city clerk, by the constable in attendance at said election or by one of the ward officers other than the clerk; and the clerk shall retain the custody of the seal, and deliver the same, together with the records of the ward and other documents, to his successor in office.

Section 42 contains provisions for the preservation of the ballots for sixty days, and for a recount of them by the board of aldermen upon a petition therefor by ten legal voters of the ward asking therefor.

Section 43 contains similar provisions for the preservation of the check-lists.

To establish the charge that the ballots and check-list in ward 4, in the city of Chelsea, were not forthwith returned to the office of the city clerk by the constable in attendance at said election, the contestant called Samuel Bassett, city clerk of Chelsea. He testified as follows:

I left my office about a quarter past 11 p. m., but the office was open later than that. I left a man in charge. I left one of the aldermen, one of the councilmen, and the city messenger there. The messenger is my clerk, and has one of the keys of the safe. I was told by the clerk that they staid fifteen or twenty minutes after I left. He locked up and went home then. The ballots and check-list of ward 4 were not returned on said November 3, 1874. They were returned to me first about 7 o'clock the next morning, on the 4th of said November. The clerk of the ward and the police officer who was on duty election day at the polls in that ward brought them. The police officer was not a constable. The officer brought the ballots and voting-list, the clerk of the ward the returns. They were both together.

On cross-examination the witness testified:

They said they called at the office. I do not know as they stated the time. My impression is it was about 12 midnight when they came. Finding the office locked, they carried them (*i. e.*, the ballots and check-list) to the office of the city marshal, and put them in the custody of William P. Daniels, captain of the night-watch. They remained there till the next morning, when they were brought to me. The voting-lists were in the same

condition as now; to say, securely bound up and sealed by the clerk of the ward. *The ballots were deposited in a box, which was duly sealed by the clerk. The seals on both packages were intact, unbroken.*

The most that can be claimed for this testimony is that it tends to prove that the ballots and check-list were not returned so promptly as they might have been, and that they were brought by a police officer to the office of the city clerk, instead of by a constable. The provisions of the statute above quoted must be construed as directory under the precedents of this House and the decisions of the courts. A slight delay in the return of the ballots and check-list, or their being carried by a police officer instead of a constable, would not of itself vitiate the poll. *The returns* of the election appear to have been constantly in the custody of the clerk of the election, their rightful custodian, from the time they were made out until they were delivered to the city clerk. No suspicion is cast upon the returns, and we have them before us. They corroborate the testimony of the witness, Bassett, in proving that the packages containing the ballots and check-list had not been tampered with. *On a recount they agreed with the returns.*

The testimony of the witnesses examined by the contestee, James A. Dinning and Jeremiah Norris, fully establish the fact that the ballots, check-list, and returns were not tampered with, and that they were delivered to the city clerk in the identical condition in which they left the hands of the officers who held the election, and without unnecessary delay.

James A. Dinning testified as follows:

My age is twenty-five years; have resided in Chelsea all my life; have been a police officer two years. I was a police officer on November 3, 1874, *with the power of a constable*, and I attended the election in ward 4, Chelsea, that day. I remained until the votes were counted and the ballots were sealed up, and up to 11.45 p. m. The count was completed and the ballots sealed up about 11.45 p. m. The officers were busy all the time; can't say why they were so long. Alonzo R. James was the warden; can't state positively his politics; understand he is a Democrat. *I am a Democrat; always voted the Democratic ticket.* When the ballots in ward 4 were sealed up they were delivered to me; I carried them to the city hall (Chelsea); the hall being fastened, I carried them to the city marshal's office. The captain of the night-watch, William P. Daniel, took them, and the next morning I delivered them to the city clerk, *the box being in the same condition as when I carried it the night before to the city hall; the seals were intact.* William P. Daniel is second assistant marshal of the city of Chelsea, and captain of the night-watch. *He is also a constable.* He is a Republican, as far as I know. There was no delay so far as I know, and I believe the time was used in counting the ballots, to the best of my knowledge. The tickets were badly split and scratched. I have heard some claim of unfairness. Some claimed on the delay; some that I carried the ballots as I did. The majority of both parties, in my opinion, believe the election fair.

Jeremiah Norris testified as follows:

My age is thirty-three years. Resided in Chelsea, Mass., about fifteen years—ward 4, Chelsea. Am a clerk. Was clerk of the ward at the election in ward 4, Chelsea, on November 3, 1874. I performed the duties of that office on that day, and was present all day in the ward-room, except half an hour. I assisted through the day and evening in counting the ballots. Alonzo R. James was warden. I think him to be a Democrat, but his politics are not well known to me; he is not an active politician. He was present during the day performing the duties of warden. The inspector superintended the counting. If any point was to be decided, it was referred to the warden. The polls closed at twenty minutes past 4 p. m. With the exception of about fifteen minutes, I remained after the polls closed; helped count the ballots; saw the box after it was sealed up and delivered to a police officer acting as constable, James A. Dinning. The work was completed about quarter to 12, midnight; wouldn't vary five minutes. The delay was because the ballots were badly scratched and it took a long time to count them. There was no other reason, in fact, for delay in making the returns. During the evening, between 9 and 10 p. m., an inspector, while we were at work counting, told me somebody sent word to keep back the return till ward 2, Boston, had sent in its returns. I spoke to the warden about it. No notice was taken of it. We worked as hard as we could to complete our returns. The election was *fair*, and I've heard no one say otherwise. Haskell D. Smith was inspector of the election.

This testimony (and it is the whole of it) dispels every shadow of doubt as to the fairness of the election and returns in ward 4, Chelsea, It would oppose the current of authority to reject a whole poll on such testimony.

HEARSAY EVIDENCE TO IMPEACH THIS POLL.

The contestant, however, attempts to cast doubt upon the conduct of the officers of the election after the close of the polls. He insists that all the other voting-precincts in Chelsea and Boston had completed their labors and had sent in their returns as early as 8 or 9 o'clock p. m., on November 3, 1874, and that if the officers holding the election in ward 4, Chelsea, had been intent on the honest performance of their duty they could have completed their labors and had their returns delivered at the office of the city clerk at as early an hour.

1. It is not alleged in the notice of contest that there was any fraudulent conduct or conspiracy on the part of the officers holding the election to withhold improperly the ballots, check-lists, and returns. The contest is grounded *on the single fact* that they were not returned *forthwith*, and that, as a legal consequence, their delivery on the morning of November 4, 1874, was too late to comply with the law. Hence it was insisted that the return from this ward must be rejected. No rule of law will permit the contestant to shift his ground of contest and for the first time, in his testimony, attack the honesty of the officers holding the election by attempting to show that the ballots, check-list, and returns were held back in consequence of a fraudulent arrangement therefor. No such issue was tendered in the pleadings, and it would reverse the most salutary rules of law to permit it. The rule is elementary that the proofs must be confined to the issues. "The evidence must, therefore, be confined to the point in issue, and must be relevant." (Am. L. Elec, § 306.) Such is the language of all the authorities. We submit that neither law nor the precedents of the House justify the departure from it in this case. But as the majority have determined to do so, we have no alternative but to follow them in the evidence, to see whether it justifies any charge of fraud on the part of any of the officers connected with the election in ward 4, Chelsea.

THE CASE OUTSIDE THE ISSUES.

To overcome the legal presumption that these sworn officers performed their duty faithfully, and to rebut the testimony of Dinning, Norris, and Bassett, that the ballots, check-list, and returns had not been tampered with, and that the election and canvass were fair, the contestant produces the testimony of Augustus Andrews and Dexter A. Tompkins. On his direct examination, Andrews testified as follows:

My age is twenty-two years; I reside at No. 5 Baldwin Place, Boston; am counselor at law; I went to the ward-room of ward 4, Chelsea, at twenty minutes or quarter of 10 o'clock in the evening. When I went in there were six or eight men present, one or two of whom were police officers. Some of those present were inside of the rails, a few outside. They were doing nothing, unless one or two were writing. I asked them if they could give me their figures—the vote both for Frost and Abbott in that ward. I asked them if they had forwarded their returns; they said, "yes, they had just sent them down." I did not see any check-lists or ballots in the room. I immediately drove back to the city marshal's office in Chelsea, and asked a police officer if he had received the figures of the votes in ward 4. He said he had, and gave them to me. They corresponded to those given to me just previously at the ward-room of ward 5. (*Sic.*)

On cross-examination, he testified:

cannot tell exactly what those figures were. I think about 400, or a little more, for Frost, and about 150 for Abbott. I do not pretend to have a distinct remembrance of it.

cannot state the names, or in any way identify the persons from whom I obtained my information. I obtained the figures at the other wards that evening, previous to going to ward 4. I received the figures from the whole Congressional district. Winthrop and Revere were the last I received; ward 4, Chelsea, next to the last. I made a memorandum at the time; it is not now in existence. I footed up the results, and they gave Frost a majority of 21. I cannot now state the wards or towns in which my figures proved incorrect. There were three or four. My memorandum has been destroyed; it was taken on simple strips of paper, waste-paper; it was nothing I cared for only to know the result.

It will not be seriously contended that this man's testimony is sufficient to impeach the election and returns in ward 4, Chelsea. It is of the most trivial character; so much so, as scarcely to merit consideration. The only apology which can be offered for doing so is the apparent confidence and sincerity with which the contestant pressed it upon the attention of the committee. If such testimony should be held sufficient to impeach this poll, it will prove no difficult task to reverse the result of any election. To vitiate a poll, and justify the rejection of the returns of an election, the testimony ought to be clear and convincing in its character. It must establish fraudulent conduct on the part of the officers, or some of them at least, charged with the duty of conducting the election, certifying the result, or making the returns. At most, this evidence, if the story is believed, only tends to show that the witness did not know what the officers of the election were doing when he visited the ward-room, and that some unknown person told him the returns had been sent down, and that the votes for Frost and Abbott, as given him by some one at the ward-room, corresponded with those given to him at the city marshal's office, a place to which the returns were not to be sent. Considering the witness's admission that he visited all the polling-places in the Congressional district on the evening of the day of the election, to obtain the vote, that he made a memorandum thereof which had been destroyed before he testified, and it casts such doubt on his testimony that it seems utterly valueless for the purpose of impeaching the return in ward 4, Chelsea.

### FURTHER HEARSAY TESTIMONY.

The contestant further seeks to impeach the election and returns in ward 4, Chelsea, by the testimony of Dexter A. Tompkins. This witness testified in substance that he is forty-seven years old; has resided in ward 1, East Boston, twenty-five years; that he is a music-teacher and a representative to the general court; that he is acquainted with one E. K. McMichael, a resident of his ward, an attaché of the custom-house in some capacity—he don't know what; that McMichael took an active interest in politics in 1874, on the Republican side; that he saw McMichael on the evening of November 3, 1874; had very little conversation with him; it was simply at the close of the polls in ward 1; that he merely gave him an invitation to supper with the rest of the ward officers; that he (McMichael) was an inspector at the election in ward 1, Boston; that he next saw him the evening of November 4, 1874, at the counting-room of Webster's stable in East Boston; that quite a number were present, and he (McMichael) stated that he went to Chelsea and directed or told the ward officers of ward 4, Chelsea, to retain their returns until they heard from ward 2, Boston; that he was questioned by a gentleman present why he did so, and what right they had to withhold their returns after they were made up. His (McMichael's) reply was that he made them or directed them to withhold them, and that they did. On his cross-examination this witness testified that there was not any intimation or suggestion in his hearing that any fraud was,

or was to be, practiced in relation to those votes under any circumstances; that no reason was given for holding back the returns in ward 4, Chelsea; the fact was simply stated. This testimony, overheard in a stable, is of a kind that would be admitted in no court of justice governed by the ordinary rules of evidence. But admit that it establishes the fact that McMichael did visit the officers holding the election in ward 4, Chelsea, and that he directed them to hold back their returns till they heard from ward 2, Boston, and that they promised to do so, and yet under no rule of law can it be claimed to impeach their returns. It is simply the most trivial and inconsequential hearsay. It casts no doubt on the election or returns in ward 4, Chelsea. It needed no serious refutation. McMichael was, however, sworn as a witness for the returned member. (Record, p. 311.) He was examined as to his connection with the returns in ward 4, in Chelsea. He was asked the following question:

Question 6. As a matter of fact, did you have anything to say or do with those returns, or had you a word or talk with any person, or give a word of advice regarding the same?—Answer. Not one word to any person, nor had anything to do with the matter.

He further testified that it was not true that on the evening of November 4, 1874, he said, in Tompkins's hearing, that he had notified the officers of any wards in Chelsea to hold back their returns till the vote in ward 2, Boston, had been heard from. He testified that one evening, shortly after election, he met Benjamin Palmer and others at the office in Webster's stable; that he couldn't say whether Tompkins was there or not; that Palmer asked him why they didn't get the returns in sooner from Chelsea; that he replied he supposed the same game would be played on Frost as was played on Burlingame; that was, that ward 2 held back long enough to ascertain how many votes were wanted to defeat Burlingame; that this was a joking and jovial conversation; that he merely answered Palmer in his own way. This is the whole evidence produced to impeach the poll in this ward.

It is only another illustration of the unreliability of hearsay evidence. The conclusion seems irresistible that the witness Tompkins had wholly misconceived the drift and purpose of the conversation between McMichael and Palmer which he had overheard. On the whole testimony, the undersigned feel no doubt that the election and returns in ward 4, in Chelsea, were fair, and the result must stand as declared. To reject it would be to defeat the will of the people, without a shadow of evidence to justify it. No proof has been adduced to show that any illegal vote was received and counted in that ward; or that any legal vote was rejected; or that any vote cast was refused to be counted; or that any person voted more than once. These observations dispose of all the grounds urged for the rejection of the vote in ward 4, in Chelsea. Our conclusion is that the vote as returned must stand. It cannot be rejected except by a disregard of the law and evidence. It would defeat the honestly-expressed will of the legal electors at the ballot-box.

6. *The Charlestown navy-yard vote.*—The only portion of the notice of contest under which any question can arise as to the vote of the employés in the navy-yard is the third specification. It is in these words:

Third. That many votes were cast and counted at said election for you (the returned member) in said fourth Congressional district by persons who were induced to cast said votes by paying, giving, and bestowing upon such voters gifts and rewards, and by promising to pay, give, and bestow to and upon such voters gifts and rewards.

The act of Congress to prescribe the mode of obtaining evidence in cases of contested elections provides, among other things, that the contestant shall, "within thirty days after said election, give notice in writing to the member whose seat he intends to contest; *and, in such notice*,

*shall specify particularly the grounds on which he relies in such contest.*" Much discussion has arisen as to what is to be understood by the words, "*shall specify particularly the grounds of contest on which he relies.*" It may be doubted whether any definition can be formulated which will accurately fix the limits of these words so as to determine by such definition whether the ground of contest is in substantial conformity to the statute or not. It is evident that it was the purpose of the framers of the law to require the averments in the notice of contest to be as certain and definite as the facts of the case would permit. The notice ought to be sufficiently specific as to the time, place, and nature of the charge, to put the returned member on notice and enable him to prepare his defense and thus prevent any surprise.

In Amer. Law of Elec., section 344, it is said:

> It seems settled by the decisions of the House of Representatives that a notice is good under the law, if it specify the *number* of illegal votes polled, *for whom* polled, *when and where* polled, without specifying the names of the illegal voters. (Wright *vs.* Fuller, 1 Bartlett, 152; Vallandigham *vs.* Campbell, 1 Bartlett, 223; Ottero *vs.* Gallegos, 1 Bartlett, 177.)

This author declares that it is settled as the law of this House that such notice must at least specify the following facts, to be good:

1. The number of illegal votes polled.
2. For whom they were polled.
3. *When* and *where* they were polled.

(1.) The notice in this case does not specify the number of votes which were procured by paying, giving, and bestowing gifts and rewards upon such voters. It simply alleges that "many votes were cast and counted" which were thus procured. "Such an allegation may mean five, or ten, or twenty, or five hundred; it is uncertain and not particular. This point was expressly ruled in the case of Lelar, sheriff of Philadelphia, in 1846. The courts say they will require of the party complaining of illegal votes to state the number, for instance, thus: twenty voted under age; fifteen voted who were unnaturalized foreigners; ten who were non-residents, &c. This particularity the courts of Pennsylvania say they will require, because otherwise they would be converted into a mere election board for the purpose of counting disputed ballots. They do not require the names of the illegal voters to be given." (See Wright *vs.* Fuller, *supra*, page 161.) We think no reputable lawyer will be found who will contend that the averment "that many votes were cast" is sufficient to raise any issue. The authorities, it is believed, are all one way. As well contend that a declaration by A alleging that B owed him "many dollars" would be good. Such averments are always treated as nugatory. In this case we can treat it as a "sufficiently particular statement" only by overruling the statute and running against the current of all the authorities.

(2.) "For whom they were polled." It alleges this, and hence in this respect the notice seems to be sufficient.

(3.) "*When* and *where* they were polled."

(*a.*) As to the time *when* they were polled, the notice is doubtless sufficient. It alleges that it was done at the Congressional election.

(*b.*) As to the place or places *where* said votes were polled, the notice only alleges that such votes were cast in said fourth Congressional district. Said Congressional district has a large number of voting precincts, not less than thirteen, and is composed of seven wards of the city of Boston, the whole of the city of Chelsea, and the two towns of Revere and Winthrop. The only notice is that votes were procured to be cast *somewhere* in the district by bribery. But where? In Boston? *If so*, where—in what ward? In Chelsea? At what voting-place? In

Revere or Winthrop? The notice fails to inform us. It reduces the question simply to this: Can the House hold that a notice of contest "specifies particularly the grounds of contest," when it simply alleges "that many illegal votes were cast for the sitting member in the Congressional district"? That is all the allegation we have in this case on this point. If the House sustains this ground of contest, it abrogates the statute, and does away with the necessity of any notice at all. Surely no man can claim that a notice stating that "your seat is contested because many voters in the district were bribed to vote for you," puts a party on notice or puts a party on his defense. It gives no more notice than it would simply to state that his seat was contested. There would seem to be no ground on which the House can safely decide to examine the merits of a case on such notice.

How is the member holding the certificate after such a notice enabled to prepare for the trial of the question whether illegal votes of the character indicated have been cast or not? It is no answer to say that he will know whether he has influenced such votes or not. He has the right to be informed of the place where it is alleged that the law has been violated, to the end that he may meet, by evidence, the allegation if false. He wants the information for his defense.

It may be suggested that the parties have waived the objection. To this there are many answers; but two would seem to be sufficient: 1. The returned member cannot waive the rights the people have in the contest. His failure to object to the sufficiency of this pleading does not abridge the rights of the people to have this case decided by the settled rules of law. The resignation of the sitting member in favor of the contestant would not waive any right of the people, or change our duty to decide this case upon the law and the facts. *Prima facie*, the people of the fourth Congressional district have the right to Mr. Frost as their Representative. He cannot, by any act of omission, defeat or impair this right so as to enable some one else to become their Representative. Any other principle would make the people's right to have Representatives, freely chosen by themselves, dependent on the act or omission of the returned member. If the law were otherwise, the question whether the people should have for their Representative the man duly elected by them would depend on the diligence and good faith of the parties to the contest. We submit that no omission of the parties to the contest to object to the sufficiency of the notice of contest can in the least affect our duty to decide for the people of that district and of the whole country the question according to the plain letter of the law. We recognize the value and importance of the doctrine of waiver in cases where it is fairly applicable. Where parties *sui juris*, representing only their own private interests, do any act amounting clearly to a waiver, a court may well act upon it. But no man has any legal right to estop the public as to their constitutional right to representation by any act of omission.

2. The House, with due regard to public interests, cannot permit a contestant utterly to disregard a plain requirement of law—one which is essential to the proper disposition of such cases. Otherwise we will have no limit to the investigation—and we can never know what are the grounds of contest until we have gone through with the whole testimony in the case. It would leave contested-election cases to be determined without any notice as to the character or limits of the contest. With the application of a reasonable rule on this subject, this class of cases has become sufficiently laborious to the committee and the House. To hold that the parties can waive notice and answer altogether, and

require the committee and the House to eliminate the grounds of contest from an examination of voluminous evidence, would be intolerable. We owe obligations to the whole body of the people, which forbid our tolerating such a practice which would consume our time in settling questions which are not brought before us as the law requires. No injustice can be done to any one by applying the law as it is written to this case; while wrong and injustice is done not only to the district directly interested in this contest, but to the whole country by a departure from the law. But there is no provision of law as to when, where, or how objection can be made until the parties come before the committee of the House for the consideration of the question pertaining to the election contest, and this, we contend, is the first and only place where such objection could be made or considered; and hence waiver is impossible. We therefore conclude that we cannot escape the duty of deciding the question whether the above specification of contest is good in law. To hold it good would be manifestly to override the statute, to reverse the precedents of this House, to run counter to the unbroken current of the decisions of the courts, and practically to relieve a contestant from the duty of giving any notice whatever. The minority respectfully submit that no exigency can justify our so doing.

### ALLEGED NAVY-YARD FRAUDS.

The contestant, to support the above specification of his notice, claims that the returned member bribed voters "by giving them employment in the navy-yard at Charlestown." In this bribing of voters he claims that "*the returned member again appears as an actor.*" In his brief, p. 20, he states his claim thus:

> It is claimed by the contestant that a large number of votes were secured for the returned member by giving voters employment in this navy-yard. The exact number of votes thus secured it is impossible to ascertain.

The statute of this commonwealth touching bribery is as follows:

> If any person shall pay, give, or bestow, or directly or indirectly promise, any gift or reward to secure the vote or ballot of any person for any officer to be voted for at any national, State, or municipal election, the person so offending, upon conviction before the court having jurisdiction of such offense, shall be punished by a fine of not less than fifty nor more than one thousand dollars, or by imprisonment in the house of correction not less than sixty days nor more than six months, or by both, at the discretion of the court. (Mass. Acts, 1874, chap. 356, § 2.)

The rule is well settled that penal statutes are to be strictly construed. This statute neither disqualifies the voter to vote nor the person voted for to hold the office, even if convicted of bribery in a judicial tribunal. The supreme court of Pennsylvania, in Commonwealth *vs.* Shaver, 3 Watts. & Serg., 338, thoroughly examined the question of bribery by a candidate, as affecting his qualification to hold office. Their unanimous judgment was: "That the trial and conviction of a sheriff of the offense of bribing a voter, previously to his election to the office, does not constitutionally disqualify him from exercising the duties thereof."

We believe the true rule is this: Where a voter is shown to have been bribed by a candidate, or by a duly-authorized agent, to vote for him, and he has so voted, that such vote ought to be struck from the ballots cast for such candidate.

The contestant relies on the case "*In re* Boston Election Petition, Malcom *vs.* Parry," Law Reports, 9 C. P., 610. This case shows that Mr. Thomas Parry declared himself a candidate for the borough of Boston at the next general election, and was adopted as such by the liberal party,

on or about the 2d of December, 1873. About the end of December, 1873, Mr. Parry determined to give away about £230 in coals among the poor in Boston. He wrote a letter to Mr. Wright, his agent, giving him instructions as to the distribution of coals. The coals were distributed by the political agents of Mr. Parry. In many cases the persons selected as donees were not objects of charity, some of them being small shopkeepers, and others having votes in respect of the occupation of premises exceeding £10 in annual value, and in many cases the donees were electors. More than eight hundred electors received a gift of coals from Mr. Parry. Several of the persons employed to distribute the coals canvassed the electors on behalf of Mr. Parry.

The question on this state of facts was whether, under the English statute, Mr. Parry had been guilty of bribery, and whether the votes of the electors thus bribed should be struck off from his returns. Section 25 of the ballot act, 1872 (35 and 36 Vict., c. 33), provides that where a candidate is proved to have been guilty by himself, or by any person on his behalf, of bribery, treating, or undue influence at an election, in respect of any person who voted at such election, the vote of the electors proved to have been so bribed, treated, or unduly influenced, is to be struck off. There was no evidence to show how the persons who received the coals voted. The evidence, however, proved: 1. That Mr. Parry was a candidate for election to Parliament, adopted by the liberal party. 2. That pending his candidacy, through his political agents, he gave coals to more than eight hundred electors, many of whom were not objects of charity. 3. That his agents, while distributing the coals, canvassed the electors on behalf of Mr. Parry. 4. It was proved who the electors severally were who were thus made the recipients of Mr. Parry's gift. 5. It was clearly proved that each elector, whose vote was asked to be struck off, had voted at the election. The only real question of dispute was whether the votes should be struck off without proof as to how the electors voted. The court admitted that prior to the above-quoted act the law required the proof of three facts to warrant the striking off of a vote on the score of bribery from the returned member: 1. That the candidate, or some person on his behalf, had bribed the elector. 2. That the elector so bribed had voted. 3. That he had voted for the party who bribed him or procured him to be bribed. It was held in this case that the recent statute had changed the rule of the common law theretofore prevailing, so far as that upon proof of the two first above-mentioned facts, the third would be presumed. We deny that the English act of Parliament is the law here. The court admit that it had changed the law of England. It is believed that there can be found no authoritative decision grounded upon the common law which announces a different rule. We therefore hold that in this case it is incumbent on the contestant, before he can ask any vote to be struck off on the ground of bribery, to establish these three propositions: 1. That Mr. Frost, or some person on his behalf, bribed the electors, or some of them, at said election. 2. That the electors so bribed voted at said election. 3. That such bribed electors then and there voted for him.

The evidence relating to this subject will be found in the record, from page 96 to page 118, and from page 411 to page 415, so far as the contestant is concerned. It is annexed to this report in Appendix A. It is not our purpose to go into any minute analysis of this mass of testimony. A careful reading of it will show that the exigencies of the public service fully justified the large increase of force; and that a considerable portion of it could have been longer retained with advantage

to the government. It also will show that when the reduction took place it was not for the want of profitable employment, but for want of money to carry on the work. With but one or two exceptions the witnesses concur in stating that the men were steadily and usefully employed. These exceptional witnesses, who deny this, are so thoroughly contradicted and overthrown by the unanimous statement of the others that no candid mind can hesitate in disregarding their testimony. The testimony also shows that much the largest portion of the employés in the navy-yard came from other Congressional districts. The force there employed is shown to have been residents of five or six Congressional districts in Massachusetts.

The only ground upon which the charge of bribery rests is that Mr. Frost and his political friends gave recommendations to a number of voters, asking the proper officers in the navy-yard to give such persons labor. It appears that persons who were not voters were employed. No questions were asked and no conditions imposed on the persons who entered the service. It is abundantly proven that no influence, no inducement, no suggestion, even, was held out by Mr. Frost, or any other person, to affect or influence any elector in giving his vote. If any elector had been influenced, coerced, or even a suggestion had been made to him as to his vote, the contestant could have shown it. The law required him to prove it. The fact that he did not venture to enter upon this line of proof clearly shows that he knew it would prove unavailing, because his charge was untrue. He fails to show that one solitary elector from the force employed in the navy-yard was improperly or illegally induced or influenced to vote for Mr. Frost. He fails to show that a single person from that force cast an illegal ballot for the returned member. No man's opinion or vote is shown to have been changed or influenced by the circumstance of his employment in that yard. There is not one word of evidence in the record to show that of that increased force a single man actually voted for Mr. Frost. The probabilities are that the most of the applicants for labor belonged to the party who had the labor in its gift. This presumption runs into every department of the government. The contestant is the last man to object to the application of that standard canon of the Democratic confession of faith: "To the victors belong the spoils." We admit that the maxim is odious in principle and demoralizing in practice. But who ever before seriously contended that a voter who asked the influence of a member or candidate for Congress to aid him in obtaining government employment was thereby disqualified to vote? Who ever before claimed that it came within the prohibition of the statute of bribery? The fair presumption is that the employés of the navy-yard were Republicans—were employed because they were Republicans, and that they voted uninfluenced, according to their convictions. We believe the law is undoubted that the contestant is bound to show that, in consequence of this increased force, he lost votes which he otherwise would have received, or that Mr. Frost received votes which he otherwise would not have received. This he has not done nor even attempted to do. A certain number of men, legal residents of the fourth Congressional district, were employed in the navy-yard between the 1st of September and the day of the election. It is not shown how these men voted. Nay, it is not shown that they voted at all. It is shown that they were legal voters, and that no influence, inducement, or dictation was used upon any voter; and it is not shown that a single one of them voted contrary to his free and uninfluenced convictions. The contestant does not prove *that* a single one of this increased force in the navy-yard was bribed by

Mr. Frost or any one acting on his behalf to vote for him. He does not prove that any one of this increased force in the navy-yard actually voted at all at that election. He does not attempt to show how any one of this increased force in said navy-yard voted. He asks the House to infer that every man of this increased force was bribed, because they were recommended and employed by Republicans; that they voted, and that their votes were cast for the returned member. No rule of law can be found which will justify the indulgence of such presumptions to disfranchise electors otherwise duly qualified.

We therefore declare that, in our judgment, Rufus S. Frost was fairly and lawfully elected as a Representative in Congress from the fourth Congressional district of Massachusetts.

We submit the following resolutions:

*Resolved*, That Rufus S. Frost was elected, and is entitled to a seat in this House, &c.

*Resolved*, That Josiah G. Abbott was not elected, and is not entitled to a seat in this House, &c.

JOHN H. BAKER.
MARTIN I. TOWNSEND.
WM. R. BROWN.
G. WILEY WELLS.

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## APPENDIX A.

### TESTIMONY OF CONTESTANT IN REGARD TO THE VOTE OF THE EMPLOYÉS FROM THE NAVY-YARD.

*Deposition of Benjamin H. Samson.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Benjamin H. Samson; my age is fifty-nine years; reside in Medford, Mass.; am a shipwright; am employed in the Charlestown navy-yard.

Int. 2. What is your position in the navy-yard?—A. I am foreman of the shipwrights.

Int. 3. Do you have anything to do with the employment or hiring men to work in said yard? If so, state what.—A. I have. I have the employment of the shipwrights, bolters or borers, also detailed men in stores, &c.

Int. 4. Did you ever have the employment of the laborers: if so, when, and for how long?—A. I had, until within about a month, I think.

Int. 5. Have you any register or book containing the names of the persons employed in the yard, from time to time, by you?—A. Yes, we have a roll showing the number employed from time to time. This contains the names, not places of residence of such.

Int. 6. Have you any book which shows the places of residence of the men employed there?—A. I kept a private account of that.

Int. 7. Will you please produce that book?—A. I have no objection; but it is in the government office. I am not certain that account has been kept for two or three months past, owing to the press of business; not since some time in October is my impression.

Int. 8. Does this book contain the names of persons who recommended the person employed?—A. So far as it is kept; that is one object.

Int. 9. For whose use is the book kept?—A. It is strictly a private matter of my own. I allow no one to examine it.

Int. 10. Will you produce the book referred to in your last answer, and all similar books you have in your possession relating to the employment since September 1, 1874?—A. I will.

Int. 11. Will you produce a certified copy of the roll of the employés in the navy-yard from September 1 to December 1, 1874, so far as the same is under your control?—A. I have no means of obtaining the general roll, only the record of those under my charge; I will produce it.

Int. 12. Do you know the number of men employed in said navy-yard in September, 1874? State as nearly as you can.—A. It would be mere guess-work. In my department I had somewhere in the vicinity of four hundred; won't be sure.

Int. 13. On October 15, 1874, how many men in your department?—A. The same number.

Int. 14. How many November 1, 1874?—A. I think between seven and eight hundred.

Int. 15. How many December 1, 1874?—A. I think somewhere in the vicinity of fifty; am not positive.

Int. 16. What was the cause of the increased employment of men on November 1, 1874, and the decrease on December 1, 1874?—A. That is a question I don't know that I am able to answer; I've understood the decrease was on account of lack of money in the department.

Int. 17. What is the monthly pay-day?—A. Mechanics are paid on the 10th and 24th of each month; that includes laborers.

Int. 18. For two months previous to the election on November 3, 1874, were the applications for employment frequent or otherwise?—A. Yes.

Int. 19. Were the persons whom you employed recommended to you for employment?—A. Many of them were; some were not.

Int. 20. Do you remember the names of any persons recommending men for employment from September 1 to December 1, 1874? If so, state all you can.—A. There have been a great many; many of the prominent men in the district; members of Congress. Had from Hon. J. M. S. Williams, James Buffinton, Mr. Gooch, Mr. Rufus S. Frost, Andrew J. Bailey. I don't recall the names, there was so many of them.

Int. 21. Did William A. Simmons, the collector, recommend any; if so, how many, during that time?—A. Yes; I think but very few. My impression is now not more than a dozen, if so many.

Int. 22. Did Charles H. Leach, another custom-house officer, recommend any persons, and were any employed on his recommendation?—A. He did, and men were thus employed; very few. My impression is not over a half a dozen or so.

Int. 23. Did any other person connected with the custom-house make recommendations which were acted upon favorably?—A. I think Mr. Huguly, of Cambridge, got two or three in.

Int. 24. Did Thomas O'Neil, a custom-house officer, make recommendations which were favorably acted on?—A. Yes; I guess half a dozen or so.

Int. 25. Do you recollect now any other persons in Chelsea or Boston who made recommendations? And, if so, state names and number of recommendations which were favorably acted upon.—A. I think a committee of East Boston, a ward committee, or members of it, made recommendations, some favorably acted on.

Int. 26. State the number of recommendations made by Mr. Frost, if you remember them.—A. To the best of my remembrance I should say somewhere bordering upon twenty.

Int. 27. Were recommendations made by any Republican committee in Chelsea, or member of such committee?—A. Not as a committee. I don't know the names of the committee there, but one Charles Campbell asked me to employ a disabled soldier.

Int. 28. Can you form any estimate of the number of men employed from October 15, 1874, to November 15, 1874, from Chelsea or Boston, in your department?—A. I should say one hundred to one hundred and twenty-five.

Int. 29. Have you with you the books which you were requested on February 5th to produce? If so, please produce them.

(Produced and annexed, marked T. S. H., 15*a*; T. S. H., 15*b*; T. S. H., 15*c*.)

A. I have the books I was ordered to produce. There are three books. I produce them under protest.

Int. 30. In the books which you produce I find a large number of names with a blue mark drawn through them. What does that indicate?—A. That they have been discharged or suspended.

Int. 31. Who is R. Beeching, whose name frequently appears in your book?—A. He is a resident of East Boston. Some two years ago he was one of the Republican ward committee of ward 1; don't know that he is now connected in any way with politics.

Int. 32. The names in the column of your book headed "Reference," indicate the persons by whom the employé was recommended, do they not?—A. That was the object in keeping the reference, but it is not always to be relied on. Persons are often credited to those who have not recommended them.

Int. 33. Who is the E. R. McMichael, whose name appears frequently in your book?—A. A resident of East Boston, member of the Republican ward committee.

Int. 34. What city committee is that referred to in your books?—A. The East Boston ward committee; Republican.

Int. 35. Who is T. Cawfield, a name on your book?—A. Don't know; yes, you've got the wrong name. He was a quarterman under me.

Int. 36. How far do these books come down?—A. To the last of November, 1874.

Int. 37. Are not most of the persons whose names appear as "reference," Republicans in politics?—A. Think they are as far as I know.

Int. 38. Did you know the politics of the persons whom you employed from time to time during last fall?—A. I had no positive knowledge.

Int. 39. Did you employ any persons whom you knew to be Democrats or intending to

vote for a Democratic candidate for Congress?—A. I have no positive knowledge how any man I employed was going to vote or did vote. I didn't ask the question.

Int. 40. Did Mr. Frost at any time see you personally during the last Congressional campaign and make application for the appointment of any person in the navy-yard?—A. Can't say positively whether I saw Mr. Frost or not after the nomination was made.

Int. 41. Has he since the election applied to you to have any person appointed? If so, give the name of the person.—A. I call to mind but one instance, the case of James Armstrong, a disabled soldier, a resident of Chelsea. There may be others.

Int. 42. If you have refreshed your memory by examination of your book, can you now tell how many persons Mr. Frost recommended to you in 1874, before the election?—A. I stated about 25, I think, previously. I then had particular reference to the laborers. I believe my books show somewhere in the vicinity of 30 or 35 laborers. I believe also about a dozen shipwrights and eight or ten borers that stand credited to Mr. Frost. Can't say he recommended them all.

Int. 43. About how many men did you employ from the fourth Congressional district during 1874?—A. Hard for me to tell, so many men were on the roll of 1873, and employed right on.

Int. 44. Was not the great increase of men in your department in October, 1874, made for political purposes?—A. I do not know that to be a fact.

Int. 45. Were not a great number of incompetent persons employed?—A. I am not aware there were incompetent persons. Persons represented themselves to me as mechanics; I hired them.

Int. 46. Were not a great number of persons employed for a very short time before the election and dismissed a very short time after?—A. Yes; quite a number taken on during the last half of October. Discharges commenced in November and continued till the last of the month.

Int. 47. Were not a large number of persons employed about election-time for a period of eight or ten days, and then discharged?—A. Yes; a good many.

Int. 48. Did you not receive from time to time letters from Charles H. Leach, requesting you to employ persons during the campaign?—A. Think I received one or two letters from him during that time.

Int. 49. Did he ever represent to you in those letters that the persons recommended could be used at the polls?—A. Have no recollection of any such representation.

Int. 50. Did you not know, in fact, that most of the persons recommended to you during that campaign were so recommended for the purpose of obtaining their vote for the Republican candidate?—A. I had no positive knowledge of that fact.

Int. 51. Were not the applications made more frequently during the Congressional campaign of 1874 than before or after it?—A. They were.

Int. 52. Were not more men credited to Mr. Frost during the campaign than before or after it?—A. I think there were.

Int. 53. Do you know Mr. Charles H. Leach, a custom-house officer, by sight?—A. I do.

Int. 54. Is he the person who is sitting at the table with Mr. Frost's counsel?—A. He is.

Cross:

Cross-int. 1. State whether or not the men employed by you in your department in the navy-yard in the autumn of 1874 were so employed with sole reference to their supposed competency to perform the labor required of them, and was that labor itself necessary to be done?—A. Yes; they were; it was.

Cross-int. 2. Were any means used by you or by others to your knowledge to influence or control the votes of these men against their wishes?—A. I used none myself; have no knowledge others did.

Redirect:

Int. 1. Have you the certified copy of the roll requested of you on February 5? If so, produce it.—A. I have not; for the reason that it is not a private matter of my own, but governed by the department, over which I have no control. I referred the matter to the commandant, and he said I had no right to it.

BENJ. H. SAMSON.

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*Deposition of Albert A. Woodward.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Albert A. Woodward; my age is thirty-seven years; am now at 695 Washington street, Boston, formerly in South Boston; am a brass-founder.

Int. 2. Have you been employed in the Charlestown navy-yard; if so, when, and for how long?—A. Yes; for about three years now.

Int. 3. Can you make any estimate of the number of men employed in the navy-yard November 1, 1874; if so, how many?—A. Not in the whole yard: in the bureau of construction between 1,300 and 1,400.

Int. 4. How many, as near as you can judge, were employed in that department on September 1, 1874?—A. About 700.

Int. 5. And how many on December 1, 1874?—A. About 300, as near as I can guess.

Int. 6. Who has the employment of men in the construction department?—A. Each foreman in his own department hires his own men.

Int. 7. What was the cause of the increase in the number of employés about November 1, 1874?—A. Can't tell.

Int. 8. Was there any sudden increase in the amount of work to be done in the navy-yard at that time?—A. There was a vessel, a school-ship, I believe, brought there to be finished off.

Int. 9. How many men were employed on her?—A. I can't tell. My branch of business is not in that line.

Int. 10. Can you tell whether or not many of the men employed about November 1, 1874, came from Chelsea and Boston?—A. I cannot; only those who came in my own shop.

A. A. WOODWARD.

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*Deposition of J. Homer Edgerly.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is J. Homer Edgerly; my age is thirty-one years; resided in Charlestown, Mass., about six years last past; am a painter.

Int. 2. Have you been employed in the Charlestown navy-yard; if so, when, and how long?—A. I have; I was there about five years, foreman of the painters.

Int. 3. Can you estimate the number of men employed in said yard on November 1, 1874; if so, how many?—A. In my department, construction department, about 1,200.

Int. 4. How many on September 1, 1874?—A. As my memory serves me, I should say about 900.

Int. 5. On December 1, 1874, how many?—A. Perhaps about 300.

Int. 6. Were there many persons from Chelsea and Boston employed in your gang on November 1, 1874?—A. To the best of my knowledge, not so many in my gang as from other places.

No cross-examination.

J. HOMER EDGERLY.

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*Deposition of J. Homer Edgerly.*

Direct:

Interrogatory 1. State your name.—Answer. My name is J. Homer Edgerly.

Int. 2. Have you been examined previously in this case?—A. I have.

Int. 3. You are foreman of the painters in the navy-yard, I believe. Will you please to tell me the number of men you had employed under you November 1, 1874, and how many of these men belonged in the fourth Congressional district?—A. I am; on November 1, 1874, to the best of my memory, 55 to 60 men; to the best of my knowledge, 15; there might have been 20.

Int. 4. How many of your gang were discharged in November after election?—A. I think, say a week after election, (35) thirty-five men might have been discharged. Later in November almost the entire gang were dispensed with.

Cross:

Cross-int. 1. While you had the full force were they usefully employed?—A. They were.

Cross-int. 2. Upon what work?—A. Renovating and painting the ship Saint Mary's.

J. HOMER EDGERLY.

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*Deposition of E. L. Hersey.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is E. L. Hersey; my age is forty-eight years; reside in East Boston; am a shipwright.

Int. 2. On November 3, 1874, were you at the Atlantic wharf, East Boston, during the day?—A. I was.

Int. 3. While there, did you, at any time, see one Simon McKay, a quarterman in the navy-yard, Charlestown; and if so, what was he doing?—A. I did; he was standing at the head of the wharf as I passed out of the gate; he had some ballots in his hand.

Int. 4. What did he appear to be doing with those ballots, or what was he doing?

(First part of interrogatory objected to.)

A. He was standing with the ballots in his hands; I passed out quick in a carriage.

Int. 5. Was it customary at that time for boats containing men from the navy-yard, who resided in East Boston, to land at the Atlantic wharf?—A. Yes.

No cross-examination.

EZRA L. HERSEY.

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*Deposition of E. A. Sherman.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is E. A. Sherman, and my age is about forty-eight years; reside in North Bennett street, No. 42, Boston; occupation is that of ship-carpenter.

Int. 2. Were you, at any time during 1874, employed at Charlestown navy-yard; if so, when and for how long?—A. Yes; I was there just six days, three days before election of November 3, 1875, and three days after.

Int. 3. Did you see, while there, a number of men employed from Boston and from Chelsea? If you did, please state, as nearly as you can, the number from each place.—A. I did; I cannot tell how many.

Int. 4. Please to state whether or not there was a large number from each of these places.—A. There were a few from Boston and a few from Chelsea.

Int. 5. What do you mean by a few?—A. Comparatively few in comparison with Charlestown.

Int. 6. Did the men employed in the navy-yard have steady work or not?—A. What was there was steady at work.

Int. 7. While you were in the yard, did you see many men idle?—A. I did.

Int. 8. Did you see many men there who did not understand the work about which they were employed?

(Objected to.)

A. I did.

Cross:

Cross-int. 1. What did you do while in the yard, and did you work steadily?—A. We were building houses out of live-oak timber. We worked steadily.

Cross-int. 2. Were you ever employed in the yard before? If so, when and how long?—A. Yes; was, during the war, off and and on four years. Might be there six weeks, go away and come back again.

Cross-int. 3. How long have you been a ship-carpenter?—A. About twenty-six years.

Cross-int. 4. How many men were there in the yard from ward 2, Boston, where you reside, as near as you know?—A. Can't give any idea.

Cross-int. 5. You have said there were a few there from Boston. How many of that few, or what part of them, came from ward 2?—A. Couldn't tell any more about it at all.

ELIAS A. SHERMAN.

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*Deposition of Commodore Edward Tatnal Nichols.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Edward Tatnal Nichols; am now commander of the navy-yard, Charlestown, and have been since October 18, 1873.

Int. 2. Can you give any estimate of the number of men employed in the said navy-yard September 1, 1874?—A. I should suppose seven or eight hundred; possibly more, possibly less.

Int. 3. Was this number increased during the months of September and October; and, if so, how much, as nearly as you can judge?—A. It was increased, as nearly as I can recollect, between five and six hundred men.

Int. 4. Was there any decrease in the number employed from November 3, 1874, to December 1, 1874? If so, state as near as you can what the decrease was.—A. Can't say positively there was a decrease on November 3, but from November 3 to December 1 there was a decrease to at least the number there on October 1, 1874.

Int. 5. What cause was there for the increased employment of men from September 1,

1874, to November 1, 1874?—A. No cause, that I know of, except by order of the authorities in Washington. One reason assigned by the Bureau of Construction was various work upon the Vandalia and new sloops of war, and piling and caring for the timber.

Int. 6. Was there really enough work during the period above mentioned to require such increased force?—A. I hardly think there was of essential work—of work that was absolutely necessary to be done. I believe, however, that the entire force was employed in various kinds of work about the yard—some in shops, some in cleaning and clearing up the yard.

Int. 7. Did you at any time remonstrate with the Navy Department at Washington against this increase of men in the yard, and against the class of men employed?—A. Don't remember that I did. My general rule is to obey the orders I receive without remonstrating.

Int. 8. Did you have any correspondence with said Navy Department on this subject? If so, what was the substance of it, as nearly as you recollect?—A. I don't remember of having had. May possibly, but don't remember it at this time.

Int. 9. Were the men employed during the above-named period, as a general rule, fit for the purpose for which they were employed?—A. Of my own knowledge I know nothing of their fitness or unfitness. They were required generally by the heads of departments. I ook their requisitions as a guarantee of the fitness of the men.

Int. 10. Was it not a matter of public notoriety that the larger part of the men employed during the period above mentioned were employed for political reasons and for the purpose of securing votes for the election of candidates for Congress?—A. I heard a great deal of talk to that effect, and also read much in the papers to the same effect.

Int. 11. In your opinion, could not all the work required to be done in the navy-yard during the above-named period have been done by a much smaller number of men than the actual number employed?—A. Yes; I think so.

Cross:

Cross-int. 1. Please state whether or not there was work to be done on the Vandalia, on the ship brought from Portsmouth for repairs, and another vessel, making them for the month of October, 1874.—A. Work to be done on the Vandalia. No ship was brought from Portsmouth for repairs. A new ship was brought round from Portsmouth for the purpose of being completed. My present impression is she was brought round subsequent to the month of October—after October. The third vessel was under contract to Donald McKay, and certain work was required to be done in the yard to complete her. Upon the Vandalia and McKay's ship there was work to be done.

Cross-int. 2. Was the increase in force made in the usual and ordinary manner and through the proper heads of departments?—A. It was, I believe.

Cross-int. 3. When you speak of the force as being larger than, in your judgment, was absolutely necessary, do you mean there was no proper work to be performed, or, in your judgment, a portion of that work might have been omitted at that time?—A. I mean to say that there was no pressing necessity for much of the work done by the increased force, and some of it could have been very well postponed. It was not essential. Still, I was very glad to have the opportunity of doing it, such as the cleaning and clearing up of the yard.

Cross-int. 4. Was work done on the ship Saint Mary's at this time, if you know?—A. I think there was. I think the Saint Mary's was at the yard during October, or a portion of October.

Cross-int. 5. If this work which was desirable to have done, although not absolutely necessary, was to be done at all, the months of September and October was the most desirable season for doing it, was it not?—A. As desirable as any; more so than winter months.

Cross-int. 6. And this work was, in fact, completed before cold weather, was it not, so that the force could well and properly be reduced again early in the month of November?—A. The work was mainly completed; but in a navy-yard, where various mechanical operations are being carried on, indoors as well as out, there is always more or less clearing and cleaning up to be done. The force could have been discharged without any detriment as soon as, or perhaps even before, they were.

Cross-int. 7. Am I to understand that, in your judgment, it would have been desirable, had there been a sufficient appropriation for the purpose, to have retained a somewhat larger force than was in fact kept after the middle of November, to have performed this various work of which you say there is always a great deal to do?—A. It would, in my opinion, have been desirable to have retained a larger force than was left in the yard after the final discharge was made, in order to attend to necessary work, but the amount of money allowed per month in the construction department was barely sufficient to keep up the general organization of that department. The mechanical force was necessarily suspended a large portion of the time in consequence of this small allotment of money.

Redirect:

Int. 1. Was not the efficiency of the construction department materially impaired by this forced reduction of the number of employés in November last?—A. The efficiency of that

department was decidedly, in my opinion, impaired by the enforced suspension of work, in consequence of the short allotment of money.

Int. 2. Was not this small allotment of money the consequence of the large amount of money used to pay for the increased employment of men in October, 1874?—A. That I could not say positively, though it is my impression.

Int. 3. Could not the regular force employed at the navy-yard have done all the work required upon the ships which arrived and were in process of construction or repair during the months of September and October last?—A. I think it is very likely they could Our navy-yard force is not always a constant force, and when speaking of the ordinary force we mean the force that is ordinarily employed when there is no particular exigency.

Recross:

Recross-int. 1. In answer to the last interrogatory you say you think that "very likely they could"; but would that have required their withdrawal from other work necessary or desirable to be performed, and was it therefore in fact desirable to have an increased force?—A. I don't think it would have necessarily withdrawn them. We always endeavored to make one job fit into another, so as to make the work continuous. So far as I know, this system was pursued, and therefore I am unable or unwilling to say there was a necessity for an increase.

Recross-int. 2. Has there been any lack of necessary work in any of the departments for an ordinary force since November, 1874, in consequence of the large amount of work performed in September and October last?—A. Work has been slack in all branches of the construction department, owing, as I stated before, to the lack of funds, in proportion to the amount of work done in September and October. There might be considered a deficiency of work subsequently thereto.

Recross-int. 3. And, owing to this slackness of work, has the force been reduced unusually low, and the expenses made unusually light in consequence?—A. I stated in my previous answer, I believe, that the slackness of work in the various branches of the construction department was in consequence of the limited allotment of money. The force has been reduced unusually low.

Recross-int. 4. Can you state any information as to the various places or districts from which this increased force in September or October was taken?—A. I cannot.

ED. T. NICHOLS,
*Commodore, United States Navy.*

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Commodore EDWARD TATNAL NICHOLS recalled:

Interrogatory 1. Have you at any time had a correspondence with the Navy Department, or any person connected therewith, relative to the discharge in November, 1874, of men from the Charlestown navy-yard?—Answer. I do not remember any correspondence in reference to the discharge of men in November. I received an order from the Chief of the Bureau of Construction, dated, I think, on or about the 5th of November, directing a reduction of the force. Some time in the early part of November I either wrote or telegraphed to the Secretary of the Navy, reminding him that a previous order of his, not to make any suspension, was still unrepealed, to which a reply came to reduce the force in accordance with the order of chiefs of bureaus. This is, I think, the substance of any correspondence in November on that subject.

Int. 2. Did you afterward write to Mr. Hanscom, Chief of the Bureau of Construction, on that subject?—A. I did write subsequently to Mr. Hanscom, but not specially upon the subject of the reduction.

Int. 3. Have you a copy of that letter with you and the reply thereto?—A. I have a copy of the letter with me. There was no reply to it. It was written in reply to one from Mr. Hanscom.

Int. 4. Will you produce that copy and a copy of the letter from Mr. Hanscom?—A. As the custodian of the records and correspondence between the Navy Department and the commandant of the yard on official matters, and being aware that it is not the desire or wish of the department to make public said correspondence, I feel debarred from producing any portion of that correspondence without previous authorization from the department.

Int. 5. You refuse to produce a copy of either of the letters called for?—A. I feel bound to do so.

Int. 6. What were the contents of those letters, as nearly as you remember them?—A. The letter from the Chief of the Bureau was to the effect that, in examining the pay-rolls of the construction department for the months of October and November (I am certain of October, November I think) it was observed that the force had been largely increased, and requesting me to inform the bureau by what authority this increase took place. In my reply I stated the various authorities which I had received from time to time from the Navy Department, and also orders which I had received countermanding measures that I had taken to prevent an increase of the force and to economize the funds.

(No cross-examination.)

ED. T. NICHOLS,
*Commodore, United States Navy.*

*Deposition of Thomas J. Marston.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Thomas J. Marston, and my age is thirty-three years; reside in Chelsea street, East Boston, No. 33; am foreman of the iron-platers in the navy-yard at Charlestown.

Int. 2. How many men did you have employed in your department on September 1, 1874?—A. I might have had forty.

Int. 3. Was this number increased up to November, 1874?—A. I think it was.

Int. 4. How much?—A. Perhaps from fifteen to twenty.

Int. 5. Have you any means of finding out the exact number?—A. I suppose the records of the yard will show.

Int. 6. Have you a record in your department?—A. There is a record at the head of the department.

Int. 7. Who calls the roll in your department?—A. My clerk, when there are men enough for a clerk.

Int. 8. Was the force of men under you decreased in November, 1874? If so, how much?—A. I think it was; don't remember the exact amount; should say twenty-five to thirty men, perhaps twenty-five.

Int. 9. How many men have you now under you?—A. I think I have about twenty-five on my roll; won't be certain.

Int. 10. Produce the roll you used during October, 1874, or an attested copy thereof.—A. I haven't got it here, and don't know whether I will be allowed to do so or not.

Int. 11. How many of the men employed by you during September and October, 1874, belonged in Boston or Chelsea?—A. I should have to answer that I did not keep a correct record of that; perhaps a third of them.

Int. 12. Who employed the men who worked in your department?—A. I hired them; some of them were ordered there by the Department.

Int. 13. Any of the persons hired by you recommended by persons other than those connected with the Navy Department? If so, name such persons.—A. Yes. Have had indorsements from nearly all the members to Congress of this State, and by different individuals outside; don't bring them to mind.

Int. 14. Did Rufus S. Frost recommend any person to you?—A. I think he did; I think he recommended one; I could not state the exact number of any individuals.

Int. 15. Did Charles H. Leach, a custom-house officer, recommend any person?—A. I think I have his indorsement.

Int. 16. Did W. A. Simmons, the collector of the port of Boston, recommend any one?—A. Am not certain whether he did during those months or not.

Int. 17. Did Thomas O'Neil, a custom-house officer, or any other person connected with the custom-house, recommend any person?—A. I can't remember who all were indorsed by. At the time we were hiring men, a great many came with letters indorsed by different individuals; some of those I did not know personally.

Int. 18. What was the cause of the increased employment of men during October and September, 1874?—A. Work on the St. Mary's, Vandalia, and McKay's ship.

nt. 19. Were all the men employed by you mechanics skilled in your particular branch of business?—A. I so considered them.

Int. 20. When was the St. Mary's work completed?—A. I can't remember.

Int. 21. When on the Vandalia?—A. Is not completed yet.

Int. 22. When on McKay's ship?—A. That's not completed.

Int. 23. How many men did you have employed on the St. Mary's in October, 1874?—A. Perhaps ten or twelve men; not employed constantly.

Int. 24. Was there any real necessity of increasing the number of men in your department during the month of October, 1874? If you say yes, was it other than a political necessity, so called?—A. There was; I should say it wasn't a political necessity.

Int. 25. Can you give me the name of a single person you employed who was not so employed during that time in expectation that he would vote for the Republican candidate for Congress in the district in which he might be a voter?—A. I don't know as I ever asked a man I employed who he was going to vote for.

Int. 26. Was ever a person employed by you employed simply because he was a good mechanic and for no other reason, and without knowledge of his politics?—A. He was employed because he could do the work. I employed him because he was capable. There might have been cases where I knew how they had voted previously, but not how they were going to vote.

Int. 27. Will you swear that no person was hired by you during the months of September and October, 1874, on account of political reasons and purposes?—A. I hired them on account of necessary work I had for them to do. Persons were recommended to me. I do not know for what purpose.

Int. 28. Have you any communications from any person recommending men to you to be hired? If you have, will you produce them?—A. I think I have. I will produce them.

Int 29. Were not the recommendations you received chiefly, if not all, from persons connected with the Republican party?—A. I received them from both parties; the majority from the Republican party.

Int. 30. Can you give the name of a single Democrat who recommended a person to you, which person was employed by you?—A. I can if I have the letters; but am not sure I have the letters.

Int. 31. Can you give the name of the man so employed?—A. I cannot.

Int. 32. Can you give the name of the person recommending?—A. Unless I have some of those letters I can't.

Int. 32½. Do you know of more than one case of that sort?—A. Can't state now positively.

Int. 33. Will you swear to one single case of that sort?—A. Will not without looking over my records.

Int. 34. Did you see Mr. Charles A. Leach at the navy-yard frequently during the Congressional campaign in 1874?—A. Couldn't state positively whether I saw him or not. Have seen him in the yard; can't state positively whether I saw him at that time.

Int. 35. Do you know Charles H. Leach, a custom-house officer, by sight?—A. I do.

Int. 36. Is he the person who has, during your examination and the examination of Commodore Nichols, been sitting at the table with Mr. Frost's counsel?—A. Yes.

Int. 37. Do you know Thomas O'Neil, another custom-house officer, by sight?—A. I do.

Int. 38. Is he the person sitting behind Mr. Leach?—A. He is.

Cross:

Cross-int. 1. How long have you been foreman in the department mentioned by you?—A. Foreman two years.

Cross-int. 2. About how many different men have you employed in that time?—A. Probably seventy-five to eighty. When work is slack I discharge men, and afterward rehire them.

Cross-int. 3. And, so far as you are concerned, have you invariably hired men with sole reference to their competency for the work you had in hand?—A. I have.

Cross-int. 4. You were unable to state without reference to your books or letters the name of any Democrat hired upon the recommendation of a Democrat in the month of October last. Can you state the name of a Republican hired upon the recommendation of a Republican during that month?—A. No; not without reference.

Cross-int. 5. Can you state that a single man was actually hired last September or October, on the recommendation of Mr. Frost or Mr. Leach or Mr. O'Neil?—A. I couldn't without reference to letters.

Cross-int. 6. Was a single man appointed through the influence of Mr. Lemons?—A. I answer as to the fifth cross.

Cross-int. 7. Can you state from what Congressional districts any of these men were employed in September or October, or whether any one of them belonged to the fourth district?—A. I can state that I had during those months men from three or four Congressional districts. I am satisfied of that.

Cross-int. 8. Did you hire any men whatever with reference to securing any votes in the fourth Congressional district?—A. I couldn't say that I did.

Cross-int. 9. Do you know, or have you reason to believe, that Mr. Frost received through you, by employment of men in the navy-yard, a single vote which he would not have received if you had hired no one at all?—A. I do not.

Cross-int. 10. So far as you know, was one single vote influenced in favor of Mr. Frost by the circumstance of any voter being hired to work in the navy-yard?—A. Not that I know personally.

Redirect:

Int. 1. Was your appointment as foreman secured by the influence of Mr. W. A. Simmons?—A. He indorsed me.

THOS. J. MARSTON.

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*Deposition of Jeremiah C. Wentworth.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Jeremiah C. Wentworth; and my age is forty-one years; reside at 81 Pearl street, Chelsea; am a laborer.

Int. 2. Were you employed in the navy-yard, Charleston, during the fall of 1874?—A. I was.

Int. 3. In what capacity, and are you there now?—A. Foreman of laborers. I am.

Int. 4. How many men did you have under you September 1, 1874?—A. About 80, as nigh as I recollect.

Int. 5. On November 1, 1874, how many?—A. Something over 400; don't know how many.

Int. 6. How many December 1, 1874?—A. Eight or ten; might not be so many.

Int. 7. How many now?—A. Ten.

Int. 8. How many of the men employed by you November 1, 1874, came from Boston and Chelsea?—A. I don't know; didn't employ any men; kept no record at all.

Int. 9. To the best of your judgment how many?—A. There might have been a hundred and fifty; somewhere along there.

Int. 10. When was the reduction in the number of men employed by you made?—A. I kept no record.

Int. 11. Fix the date of the reduction of men made between November 1 and December 1, as nearly as you can.—A. It wasn't far from the 12th of November, as near as I recollect.

Int. 12. When was the great increase of men made in your department? State as near as you can.—A. From the 15th to the last of October.

Int. 13. How long have you been foreman?—A. Four years next July.

Int. 14. Who secured your appointment?—A. Samuel Hooper, Representative in Congress.

Int. 15. Do you know Mr. Charles H. Leach, a custom-house officer, by sight?—A. Never saw him before to-day.

Int. 16. Is he the person who has been sitting near Mr. Frost's counsel during your examination?—A. Yes.

Cross:

Cross-int. 1. Has Mr. Leach sat any nearer to Mr. Frost's counsel than other gentlemen, and has he spoken a word or made a suggestion of any kind?—A. I never saw him till I turned round to answer the last question; didn't know he was in the room; not to my knowledge spoken.

Cross-int. 2. What was the occasion of the increase of laborers in October, 1874? What was the work required of them which they actually performed and was it useful labor?—A. To protect timber, lumber, iron, &c., lying loose around the yard. While they were there they performed the work. It was useful to the best of my knowledge; necessary to be done.

Cross-int. 3. In point of fact, was there not still further work about which the force could have been usefully employed if there had been a sufficient appropriation of money made to pay them?—A. According to my judgment I should say there was, if there had been money enough to pay them.

Cross-int. 4. When you speak of the probability that of this entire number some one hundred and fifty may have come from Boston and Chelsea, do you speak from any personal knowledge of the fact, or is it mere estimate without any knowledge whatever?—A. It is mere estimate. There may not have been so many laborers.

Redirect:

Int. 1. You knew at the time where the men came from who were employed by you, did you not?—A. Some few persons I knew where they came from. I didn't hire any.

Int. 2. Where were you on election day?—A. At the polls in Chelsea.

J. C. WENTWORTH.

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*Deposition of Samuel Dwight.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Samuel Dwight, and my age is forty-one years; reside at 15 Edgworth, Bunker Hill district; am foreman of shipsmiths at the Charlestown navy-yard.

Int. 2. How many men did you have employed under you September 1, 1874?—A. Fifty-four.

Int. 3. How many November 1, 1874?—A. Seventy-one.

Int. 4. On December 1, 1874?—A. Eleven.

Int. 5. Mr. Sampson had nothing to do with the employment of your men, had he?—A. No.

Int. 6. Your gang is entirely separate and distinct from his, is it not?—A. It is.

Cross:

Cross-int. 1. State whether you had actual employment for the seventy-one men you speak of. If so, state what was their work.—A. I did; doing iron-work for the new ship *Vandalia*, repairs on Saint Mary's and Plymouth.

Cross-int. 2. Who hired these men?—A. I employed them all myself, with the exception of five or six men in the gang.

Cross-int. 3. Were all these men skilled mechanics?—A. All good men to do the work required, excepting one man, an inferior man, who was employed by orders from the department.

Cross-int. 4. Did you employ them with sole reference to the performance of work deemed necessary to be done and their competency to do it in a proper manner?—A. I did.

SAM'L DWIGHT,
*Foreman Shipsmiths.*

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*Deposition of Daniel Barrett.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Daniel Barrett, and my age is forty-four years. Reside at 18 Monument street, Bunker Hill district; am a pump and block maker.

Int. 2. Are you employed in the Charlestown navy-yard; if so, in what capacity?—A. Yes; as foreman of the block-makers.

Int. 3. How many men were employed under you September 1, 1874?—A. About fifteen.

Int. 4. How many November 1, 1874?—A. None at all.

Int. 5. How many December 1, 1874?—A. None.

Int. 6. When was your gang reduced?—A. November 11, 1874, I believe.

Int. 7. How happened it that you had no men employed on November 1, 1874?—A. I had orders to discharge eight and suspend eleven.

Int. 8. When did you take on men to fill the places of those discharged and suspended, as above stated?—A. I have taken on one man and three boys in the latter part of December last.

Int. 9. What do you mean by your answer to the 6th interrogatory?—A. I mean there were seven men discharged and eight suspended November 11, 1874. I misunderstood interrogatory 4. I hand on November 1, 1874, eighteen men on the roll.

Int. 10. Is your gang separate and distinct from Mr. Sampson's?—A. Yes.

Int. 11. How many of the men employed by you November 1, 1874, belonged in Boston or Chelsea?—A. Only one to Chelsea. The others, excepting three, belonged to Boston. One belonged in Everett, one in Hyde Park.

Int. 12. Do you know in what ward in Boston they belonged?—A. No; not exactly; some to ward 21.

No cross-examination.

DANIEL BARRETT.

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*Deposition of William Hichborn.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is William Hichborn, and my age is forty-four years; reside 27 Trenton street, Charlestown; am foreman of ship-joiners in Charlestown navy-yard.

Int. 2. How many men were employed in your department September 1, 1874?—A. Forty-eight.

Int. 3. Was this number increased to November 1, 1874; and, if so, to what extent?—A. It was; from September 1 to October 1, it increased 4. From October 1 to November 1, it increased 16.

Int. 4. When did that number decrease, and how far?—A. About the middle of November, to about 15 men.

Int. 5. Who has the hiring of the men in your gang?—A. I have the recommendation of them.

Int. 6. How many of the men employed under you November 1, 1874, came from the fourth Congressional district?—A. I can't tell certainly; should say one-third.

Int. 7. Can you tell the names of any persons who recommended men to you for employment? If so, give them.—A. I cannot.

Int. 8. Did Rufus S. Frost recommend any person to you?—A. He did not.

Int. 9. Or W. A. Simmons?—A. Don't think he did during October and November, 1874.

Int. 10. Have you any means of ascertaining the names of those who recommended men to you?—A. Have no record.

Cross:

Cross-int. 1. State whether the increase of men in your department was necessary for the public service?—A. It was.

Cross-int. 2. Was there work necessary to be done by an increased force? If so, state what.—A. There was; on the Saint Mary's and Plymouth.

Cross-int. 3. Did you hire or recommend for employment these men with sole reference to their competency for the work you had for them to do?—A. I did; and for no other reason.

Cross-int. 4. Did you know the politics of the men you employed or were their politics or votes made a condition of their employment in the slightest degree whatever?—A. When a man was a neighbor I might have known, but not the politics of the great mass of the men; not in the slightest degree.

Redirect:

Int. 1. Was the efficiency of your department in any way impaired by the forced reduction of the number of employed in November, 1874?—A. The efficiency is not impaired; but with more men more work, of course, can be done.

Int. 2. Then fifteen men are sufficient for the usual work to be done in your department?—A. The number of men employed depends entirely upon the amount of work the government orders done.

Int. 3. What was the cause of the reduction of men in your department in November, 1874?—A. The decrease of work for one thing; lack of money to pay men another.

Int. 4. Was not want of money the chief reason?—A. Not altogether the reason. I should say if it wasn't for want of money I should have more employed now.

Int. 5. When did they, your gang, get through work on the Saint Mary's?—A. In the middle of November. She sailed December 8.

Int. 6. When did she come into the yard?—A. Some time in October; latter part of October, 1874.

WM. HICHBORN.

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*Deposition of William B. Splaine.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is William B. Splaine, and my age is twenty-nine years; reside in Boston, Charlestown district, 21 Decatur street. Am machinist.

Int. 2. Were you employed at the Charlestown navy-yard during the fall of 1874? If so, how long, and in what capacity?—A. I was. I was employed there off and on for three years from 1871 until May 1, 1874, when the gang I belonged to was suspended for two months; on June 27, 1874, I went back, worked there till November 13, 1874. I worked as first-class iron-plater. I was quarterman about three years.

Int. 3. Who was the foreman of your department in the fall of 1874?—A. Thomas J. Marston.

Int. 4. About how many men were then employed in his department on November 1, 1874?—A. Between forty-five and fifty-five men, as nigh as I recollect.

Int. 5. How many of these men were actually employed on the Saint Mary's while she was at the yard?—A. I should judge, on an average, not more than three or four.

Int. 6. Was this sufficient work to keep the men employed at in your department about November 1, 1874?—A. No.

Int. 7. Were there many men idle about that time?—A. I should judge about half, loafing around, doing nothing; no work for them

Int. 8. About November 1, 1874, did you go through the various departments in the navy-yard during working-hours? If so, please state what you saw.—A. I had occasion to go from where I worked several times to the blacksmith's shop, which was quite a distance, and also went to different shops in my department several times. Saw lots of men loafing in every place I went to. Saw men playing checkers during working-hours. Saw men holding a kind of a meeting in a cellar under the place where I was at work.

Int. 9. How many men playing checkers? How many looking on?—A. Two playing, eight or ten looking on.

Int. 10. How many men were there at this meeting or caucus of which you have spoken?—A. The cellar was pretty full. I should judge there were between fifty and sixty men.

Int. 11. Did the men employed in the yard seem to be actively employed or otherwise?—A. Otherwise; they seemed to be loafing around doing nothing; that is, the majority.

Int. 12. While you were in the yard during September and October, 1874, did you see Mr. Rufus S. Frost in your department, and at any time with Mr. Marston, your foreman?—A. I did, two or three times, in the shop, inquiring after Mr. Marston. Saw him also with Mr. Marston three times, in the shop or office. Saw Mr. Frost going through the yard by the shop several times in his carriage.

Int. 13. State whether or not Mr. Marston, your foreman, was an ardent supporter of Mr. Frost in the Congressional campaign?—A. I should judge he was from what I could hear.

Int. 14. State whether or not it was the common talk among those employed in the navy-yard, that they were employed for political reasons and for the purpose of securing their votes?—A. One man in there told me he was employed for the purpose of supporting Mr. Frost. He was president of a Frost club in East Boston. He said he secured a steady job all winter from Mr. Marston for supporting Mr. Frost. He worked about five or six days after the election and was discharged. He told me after he was discharged, feeling displeased about it. In my department it was the common talk that they were employed for political reasons; also all through the yard, among different gangs with whom I had conversation, I heard the same thing.

Int. 15. Do you know of any particular cause or exigency which required an increase of men in your department in the month of October, 1874?—A. I do not. Previous to October a great many of the departments in the yard had been working on short time.

Cross:

Cross-int. 1. How many and what vessels were the men in your department at work upon, at all, in the month of October?—A. The Vandalia was the one building; some repairs were made upon a vessel that came in. On the Saint Mary's there were a few repairs and some composition valves for the McKay ship; three or four vessels.

Cross-int. 2. How many men were employed in your gang in October?—A. Between forty-five and fifty, or over. I refer to those over whom Marston was foreman.

Cross-int. 3. When different gangs or squads of men were detailed to any particular work, was there any man in charge who had the direction and control of those men for the time being?—A. There were no regular quartermen in my department, but when a job was to be done outside the shop, Mr. Marston would tell a man to go and do it, and take the men he wanted to help him.

Cross-int. 4. Would this man, so ordered, keep an account of the number of men and of the time spent on that particular job?—A. No; only report they had the job done.

Cross-int. 5. When a vessel is sent in for repairs, is no account kept of the time spent in the repairs of that vessel?—A. Yes; the foreman gives in the time to suit himself.

Cross-int. 6. What was your position and duties there in October last?—A. I was first-class iron-plater.

Cross-int 7. Did you have charge of any men under you at any time during the month?—A. No; not since the April before.

Cross-int. 8. What was the name of the man that told you he was put in there for political reasons?—A. Michael Clancy.

Cross-int. 9. When was he put in?—A. In the latter part of October.

Cross-int. 10. And before and at the time he was put in he was president of the Frost club in East Boston, was he not?—A. He was before, I know, and I think he was a little while after the election.

Cross-int 11. Now state as nearly as you can what Clancy said to you on the occasion referred to; state fully.—A. He told me he always supported Marston and packed caucuses for him in East Boston, and that Marston hired him in or gave him a job in the yard for the purpose of supporting Mr. Frost's election, and that Marston promised him a winter's job, and afterward went back on him.

Cross-int. 12. When and where was this said?—A. He told me of this in the shop, and also in the street outside the navy-yard, after the election.

Cross-int. 13. Before or after he was discharged?—A. After.

Cross-int. 14. For what reason were you discharged?—A. On account of scarcity of work; not work enough to be done.

Cross-int. 15. While you were there in October, were you industrious or were you one of the loafers?—A. They always kept me at work when they had any to do.

Cross-int. 16. Will you name the parties you once saw playing checkers?—A. I cannot, for they were not in my gang, but in another.

Cross-int. 17. Name any one who saw them if you can.—A. James Finn; I know a good many by sight who saw them, but can't state their names.

Cross-int. 18. Where was this meeting held of which you spoke, and for what purpose, if you know, and name all persons who were present?—A. I should judge about a week before election; somewhere about there; I don't exactly know the direct purpose. They were all laborers, as nigh as I could understand. I didn't know them.

Cross-int. 19. At what hour in the day was this, and how long did the meeting hold?—A. It was between the hours of 2 and 4 p. m., and lasted nearly that time.

Cross-int. 20. Describe particularly the place where it was held.—A. In the cellar underneath the iron-platers' shop I worked in.

Cross-int. 21. Were you within hearing of anything that was said; if so, what was said, and did you see anything done; if so, what?—A. I was not within hearing of it. I saw lots of men sitting down and standing round when I went out at back side of the shop.

Cross-int. 22. Can you name one single person, besides Clancy, whom you heard say anything about being hired for political reasons? Give the name and address if you can of every such person.—A. I cannot, no more than the general talk of the people around the shop, in the yard, and in the streets also.

Cross-int. 23. Can't you give one single name, if it was so common?—A. Yes; Patrick

Sullivan was one man who worked in the yard at the time. Jeremiah Malony another. John Momtain, and several other men I might mention. Fifty of them probably.

Cross-int. 24. Where do these men you have named belong, and did either of them reside within the limits of the fourth Congressional district?—A. They lived in the fifth Congressional district.

Cross-int. 25. Who employed those men, if you know?—A. I don't exactly know who employed them; they were not in my gang.

Cross-int. 26. Did you hear any man state or intimate in any form of words that he was required to change his politics or give a vote against his choice as a condition of being employed in the navy-yard?—A. No.

Cross-int. 27. You entertain and have expressed some feeling, have you not, on account of your having been discharged?—A. No; not when I know there is no work to be done.

Cross-int. 28. How was your evidence in this case procured, if you know?—A. I was summoned to come here; never knew there was any investigation here till I got a summons.

Redirect:

Int. 1. Is not Mr. Marston, the foreman, a well-known politician in ward 1, Boston?—A. By the general sense of the people he is; also well known as a caucus-packer.

Int. 2. During the Congressional campaign of 1874, was he or not frequently away from his duties at the yard?—A. As far as I have knowledge, during the month of October he wasn't in the shop half the time, and hence we were idle about half the time.

Int. 3. Is William Hichborn, foreman of the joiners in the navy-yard, a well-known politician?—A. I have known him to be a leading one for the last fourteen years.

Recross:

Recross-int. 1. You have had something of a reputation as caucus-packer over in Charlestown, have you not, and fairly earned that reputation?—A. Not that I know of myself.

WM. B. SPLAINE.

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*Deposition of John W. Easby.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is John W. Easby, and my age is fifty-four years. I belong to the United States Navy as naval constructor; am now attached to the Charlestown navy-yard.

Int. 2. Can you tell how many men were employed in the Charlestown navy-yard, in the construction department, on September 1, 1874?—A. Including apprentice boys, 588. Am not certain that three or four clerks are not in that number.

Int. 3. How many on October 1, 1874?—A. Six hundred and forty-nine, with the same understanding as to boys and clerks.

Int. 4. How many on November 1, 1874?—A. Eleven hundred and ninety-nine, with the same understanding.

Int. 5. How many on December 1, 1874?—A. One hundred and fifty-one.

Int. 6. Was the number of apprentices increased materially from September 1, 1874, to October 1, 1874; to November 1?—A. Decrease from September 1 to October 1 was one; from October 1, 1874, to November 1 was one.

Int. 7. What was the decrease from November 1 to December 1, 1874?—A. I think three, but am not very positive.

Int. 8. Was the full number of laborers employed in the navy-yard during the months above mentioned credited to the construction department?—A. No.

Int. 9. What proportion did the number of men employed in the construction department, during the months above mentioned, bear to the whole number of men employed in the yard, as near as you can tell?—A. I am entirely unable to say.

Int. 10. While the Saint Mary's was in the yard last fall, was there a great deal of work done on her by the iron-platers' department?—A. No; very little general repair of iron-work, of which there was little to be done. Comparatively little work was done in iron and brass. I speak now, of course, of only what I know as occurring in my department. My department includes the iron-platers' department.

Int. 11. Was the joiners' work on the Saint Mary's completed when the said reduction of men was made in November, 1874?—A. It was not.

Int. 12. Did you, during the Congressional campaign in the fall of 1874, receive a communication from Rufus S. Frost?—A. I think it is likely—no, I think not, before the election. I am not very positive; that's my impression as to time, I mean.

Int. 13. Did you, about the time of election, receive a communication from him (Frost); if so, what was it?—A. My impression is I received a communication from him very soon *after* election. It was in writing. I think I destroyed it. I do not know where it is now.

The substance of it was to continue in employment Bogan, assistant draughtsman. I could not comply with his request.

Int. 14. Did you receive a communication from him at any time to employ a number of men?—A. In addition to the letter just referred to, I received a note in December, 1874 (perhaps I can find the note), asking me to employ one man. This I was unable to do. My impression is that I received another letter, of whose contents I have no memory.

Int. 15. Did Mr. McMichael, of East Boston, request you to employ any men during the Congressional campaign—Mr. E. K. McMichael?—A. Yes, he did; do not remember how many.

Int. 16. Did he represent himself to you as coming from Mr. Frost?—A. Am not certain.

Int. 17. Did you know him to be an active supporter of Mr. Frost in East Boston?—A. I had but recently arrived in Boston, and, outside of the Navy, perhaps did not know half a dozen men, and only knew Mr. McMichael as an active politician from hearsay.

Cross:

Cross-int. 1. Was a single individual employed or continued in employment in the navy-yard, so far as you know, through the recommendatian of Mr. Frost?—A. As far as I positively know, no one; but I think there was.

Cross-int. 2. I ask for your knowledge. Now, will you state the name or business of one man who was employed or continued in employment on the recommendation of Mr. Frost?—A. I cannot.

Cross-int. 3. Do you know the amount of iron and brass work actually done on the Saint Mary's?—A. I do not know exactly the amount.

Cross-int. 4. Who in your department would be best informed on that subject?—A. The head of the department, and he must get his information from the books.

Cross-int. 5. Have you, then, the means of answering accurately as to the amount of work so done?—A. The accurate amount can be got from the books.

Cross-int. 6. And will the books referred to show the amount of all the work done in your department during the time referred to?—A. They will.

Cross-int. 7. Will you furnish a statement of such work covering the month of October, 1874, and annex it to your deposition, showing in detail the different kinds as well as the amount of work done?—A. I will if authorized by the Navy Department to do it.

Cross-int. 8. What other vessels were under construction or repair in the month of October?—A. The only vessel I remember under construction was the Vandalia; I don't think the Plymouth had then arrived. That's all I remember; yes, there was some little work done for McKay's ship, some castings, &c.

Cross-int. 9. When were you first connected with this navy-yard?—A. Reported for duty September 20, 1874.

Cross-int. 10. How many men were then employed in your department?—A. I presume there were six hundred and forty-nine, as I find that number employed October 1, a few days aferward.

Cross-int. 11. Who hired the additional men about the last of October or 1st of November?—A. By the different foremen of departments.

Cross-int. 12. Was there work in the yard for all the men thus employed?—A. There was.

Cross-int. 13. Was the reduction in the force subsequently made owing to a scarcity of work or to other causes?—A. It was owing to a scarcity of money.

Cross-int. 14. So far as you have knowledge, will you state whether a man's politics or preference for any particular candidate for political office was made a condition of his employment in your department?—A. When I wanted men I informed the different foremen of the fact, and left the selection of the men to them, and did not know the men.

Cross-int. 15. In calling on your foremen to hire men, did you ever instruct them or intimate to them that any reference was to be made to their political preferences?—A. No.

Cross-int. 16. Was this increase of men made through your orders issued to your foremen?—A. The order to increase the number of men came to the commandant through the Navy Department. The commandant forwarded the order to me, and I directed the foremen to make the increase.

Cross-int. 17. As the order came from the Navy Department did it specify the exact increase in each separate department of the navy-yard?—A. It did not.

Cross-int. 18. Who determined the increase for your department?—A. There never was a number specified.

Cross-int. 19. So far as the increase was made, who determined the number?—A. By the different foremen who made the requisition. The foremen were not limited in their requisition.

Cross-int. 20. Were they not limited by the necessity of each case for labor?—A. I gave them no specified number to be confined to, but I had the power to stop the number of men if I thought there was not work enough for them.

Cross-int. 21. And did you, in good faith, exercise this discretion, and limit the increase

to the actual necessities of the service in your department?—A. The time to stop the increase never arrived, as I was able to employ all the men on the rolls.

Cross-int. 22. Do you mean by this, they could be usefully employed, and were so?—A. I mean they could be, and it depended upon the vigilance of these gentlemen whether they were so or not.

Cross-int. 23. What opportunities did you have to personally observe the labors and operations of the men in your department; how much did you see of them from time to time, in October and November last?—A. I had all opportunities afforded when I was able to leave the office. Work that is particularly in a hurry I have to visit frequently, especially out-door work. In my visits to these different places, I had opportunity to observe whether men were working or not. Laboring men and carpenters I saw, generally, daily, and such inside workmen not so much.

Cross-int. 24. So far as you did observe, were the men of your department, during those months, kept steadily and usefully employed?—A. In two or three instances I had occasion to call the attention of the quarterman to the fact that the men were not working as they ought. They were, besides these exceptions, employed usefully.

I wish to add to my answer to the 8th cross-interrogatory, this, that in addition to work being done in constructing and repairing ships, we were also breaking up the old ship "Virginia," and had a large quantity of timber and plank around the yard it was necessary to pile up for preservation.

J. W. EASBY,
*Naval Constructor.*

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*Deposition of John H. Roberts.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is John H. Roberts, and my age is thirty-four years; in Charlestown I reside; am an iron-plater.

Int. 2. Were you employed in the Charlestown navy-yard during the year 1874; if so, when, and for how long?—A. I was; from the last of June to November 13.

Int. 3. In what department, and under what foreman?—A. In the construction department, under Thomas J. Marston, the foreman of the iron-plate department.

Int. 4. How many men were employed in the iron-platers' department while you were there?—A. When I went there in June, I should judge there were fifteen; on September 1, twenty-five. From September 1 to November 1 I judge the number was increased to fifty.

Int. 5. How many men were discharged when you were?—A. There were only two or three of the whole force remaining when I was discharged, November 13.

Int. 6. During the Congressional campaign of 1874, was your foreman, Thomas J. Marston, constantly in the shop or was he frequently absent from his duties?—A. Not constantly; don't know that he was absent more than he was before that.

Int. 7. Were the men in the iron-platers' department kept constantly busy?—A. Generally, I do not think they were.

Int. 8. Is or is not Mr. Thomas J. Marston an active politician in East Boston?—A. He is reported to be such.

Int. 9. Did you see Rufus S. Frost in the navy-yard during the months of September and October, 1874?—A. I have seen a man, said to be Rufus S. Frost, during that time in there; he was pointed out to me as being that man.

Int. 10. How frequently did you see him there?—A. Several times; perhaps three times.

Int. 11. Did you see him with Mr. Marston?—A. I saw him in the shop inquiring for Mr. Marston.

Int. 12. Was Mr. Marston a supporter of Mr. Frost as a candidate for Congress?—A. He was reported to be such.

Cross:

Cross-int. 1. So far as you know, was there, at any time you were there, any improper means or influence used by Mr. Marston, or any other person, to control any votes in favor of Mr. Frost?—A. No.

JOHN H. ROBERTS.

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*Deposition of Peter J. Melley.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Peter J. Melley; my age is twenty-three years next month; have lived at the corner of Highland and Maverick streets, Chelsea, Massachusetts, for six years last past; am a peddler.

Int. 2. Were you at any time employed in the Charlestown navy-yard; if so, when and how long?—A. Yes; I went there the Wednesday before the election, November 3, 1874; staid there eight days.

Int. 3. What did you do while there?—A. I was in the laboring gang; helped them shift lumber.

Int. 4. How many hours a day were you employed, and what were your special duties?—A. Eight hours; supposed to help the gang shift lumber from one place to another.

Int. 5. How did you obtain your position in the navy-yard?—A. Well, the only way I know, I was working at the polls on the annexation of Chelsea to Boston; received no money for it; was told, by one Brodrick, it would be right in a few days.

Int. 6. What was your occupation before you went to the navy-yard?—A. Was running a circular saw for Mr. Black, Marginal street, Chelsea.

Int. 7. Did you work in the navy-yard, Charlestown, November 3, 1874: if so, how long?—A. Yes; four hours.

Mr. Bryant, of counsel for the returned member, objects to the foregoing on the ground that it is utterly irrelevant and foreign to any issue in the cause.

PETER J. MELLEY.

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*Deposition of Edward T. Nichols.*

Direct:

Interrogatory 1. State your name, age, residence, and occupation.—Answer. My name is Edward T. Nichols, and my age fifty-two; Boston navy-yard, naval officer, at present commandant of the navy-yard.

Int. 2. During the months of September and October, 1874, did you have any official correspondence with Mr. Hanscom, chief naval constructor; if so, will you please annex copies of that correspondence?—A. During the months of September and October I received from Mr. Hanscom certain official telegrams and an official written communication in regard to the employment of men in the navy-yard in Boston. Whether or not I replied to any of those communications, I do not now remember, but my impression is that I did not, except in a formal way of acknowledging their receipt. I have not with me copies of that correspondence, but I have the substance of it embodied in a letter from myself to Mr. Hanscom, in reply to one from him of a later date than October.

Int. 3. Will you produce copies of the letter from Mr. Hanscom, and your reply, which you refer to in the latter part of your last answer?—A. I will; and I have the copies here. The additional letter attached, from Mr. Easby, the naval constructor, is necessary, as I refer to it in my reply.

Int. 4. In your reply you state that you think the largest increase was made subsequent to the 23d of October, at which time the chief of the bureau was in Boston. Will you state whether or not he visited the navy-yard while he was in Boston? By the word reply, I refer to your letter to Mr. Hanscom.—A. I wouldn't state positively that he visited the yard, but to the best of my recollection he did.

Int. 5. While in Boston did he issue or give any orders respecting the navy-yard?—A. What orders he may have given to others connected with the yard, if any, I do not know. I received from him no official communication while in Boston at that time.

Int. 6. Would he be likely to communicate with any one at the navy-yard except through yourself?—A. That I could not answer. Officially, the commandant is the only channel of communication to the subordinates in the yard.

Int. 7. Did you see Mr. Hanscom while he was in Boston at that time?—A. That's a difficult question to answer, as I have already stated that I was not positive whether or not Mr. Hanscom visited the yard on that occasion. If he did I undoubtedly saw him.

Int. 8. In answer to interrogatory five, you say you received no official communication from Mr. Hanscom while in Boston. Did you receive any communication of any kind?—A. I did receive a note from Mr. Hanscom, marked private.

Int. 9. Will you produce that note, if you still have it in your possession?—A. (Before answering this question, the magistrate ruled, as matter of law, that the witness was compelled to produce the letter, though objecting. The witness then desired it to be noted that he only produced it because he was so compelled under the ruling, and that he did so against his will. He protested against it, because of the sacredness of private correspondence.) I will produce it, and do so, and annnex herewith as Exhibit B.

No cross-examination was desired.

ED. T. NICHOLS,
*Commodore, United States Navy.*

EXHIBIT B., G. M. H.

[Private.]

BOSTON, MASS., *October* 23, 1874.

MY DEAR COM.: I wish you would approve requisitions for men to be employed as they may be made until the 1st of November. Some fifty additional men has allowed from the Chelsea district, and I suppose some more will be required from Gooch's district. The administration desire the success of Gooch and Frost.

Yours, respectfully,

I. HANSCOM.

Com. E. T. NICHOLS, *U. S. N., Commandant.*

(On envelope:) Revere House, Boston. Private. Com. E. T. Nichols, U. S. N., commandant navy-yard, Boston. Exhibit B, G. M. H.

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UNITED STATES OF AMERICA,
*District of Massachusetts, ss:*

To Edward Tatman Nichols, commodore, U. S. N., commandant at Boston navy-yard, greeting:

You are hereby required, in the name of the United States of America, to appear before me, and bring with you all correspondence and telegrams between you and the department at Washington relating to or bearing upon the employment of men in said yard during the year 1874, A. D., George M. Hobbs, esquire, notary public within and for the county of Suffolk, in said district, at my office, in the Boston Post building, on Milk street, in Boston, within said district, on the fifteenth day of April, current, at ten o'clock in the forenoon, and from day to day thereafter, until the matter hereinafter named is heard by me, to give evidence of what you know relating to a contested-election case, then and there to be heard, in which Josiah G. Abbott is the contestant and Rufus S. Frost the returned member.

Hereof fail not, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Witness my hand and seal at Boston the tenth day of April, A. D. 1875.

[SEAL.] GEORGE M. HOBBS,
*Notary Public.*

A true copy.
Attest:

E. W. FARR,
*Constable.*

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NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,
*December* 2, 1874.

SIR: In examining the pay-rolls under this bureau at the yard under your command for the months of September and October last, it is noticed that the force was largely increased during the latter month.

Will you be good enough to inform the bureau under what orders this increase was made?

Respectfully, your obedient servant,

I. HANSCOM,
*Chief of Bureau.*

Commodore E. T. NICHOLS,
*U. S. N., Comm't Navy-Yard, Boston, Mass.*

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NAVY-YARD, BOSTON,
NAVAL CONSTRUCTOR'S OFFICE,
*December* 4, 1874.

COMMODORE: In obedience to your order of this date, I respectfully report as follows:

Between the 1st and 31st of October last, there was taken on the rolls of this department, by requisition, five hundred and eighty-six (586) men.

The employment of these men was authorized by the bureau's orders dated the 7th, 10th, 12th, and 16th October, 1874, and they were at work on the new sloop Saint Mary's, stowing and piling timber, breaking up the Virginia, docking the Plymouth, receiving stores, shipping material belonging to the Miantonomoh, keeping ships, &c.

Very respectfully,

J. W. EASBY,
*Naval Const., U. S. N.*

Commodore E. T. NICHOLS,
*U. S. N., Com'd't Navy-Yard.*

DECEMBER 5, 1874.

SIR: I have the honor to acknowledge the receipt of the bureau's letter of the 2d instant, informing me that in examining the pay-rolls of construction at this yard for the months o September and October, it is noticed the force was largely increased during the latter month. Will you be good enough to inform the bureau under what orders this increase was made?

While I may be excused for expressing surprise at this inquiry, I beg leave respectfully to reply somewhat at length and in detail, to wit:

The direct official orders I have for an increase of force in October are as follows, viz: First, a telegraphic order from the Chief of the Bureau of Construction, dated October 7th, to employ twenty additional men in construction department, by order of the Secretary; second, a written order from the Chief of Bureau of Construction, dated October 16th, to increase the force in the construction department, for the purpose of completing the ships and boats for the new sloops of war and for stowing the timber in the yard.

By the report of the naval constructor, accompanying this, it will be seen how many additional men were employed during the entire month and the nature of their employment. The two orders of the 10th and 12th, cited by Mr. Easby, were for one man each, and I do not deem it necessary to cite them.

That I had every reason to think and believe that the increase which was made in October was fully known to and approved by the bureau, the above-cited orders and the following orders and transactions seem clearly to show.

To go back a little in the order of time, I would say that the increase of force began in September. On the 7th of that month, a communication was addressed to me by the chief of the bureau, directing me to enter the names of seven men on the rolls. On the 24th of the same month a requisition for twenty men was sent in by Naval Constructor Pook. Upon ascertaining that there were no funds to pay this additional force, I declined to approve it. In reply to my inquiry as to why he sent in requisitions for men when he had not the means of paying them, he stated that those particular names had been handed to him by outside parties, with a request that he would require them. On the same day, viz, September 24, I received an official communication from Mr. Pook, informing me that the money "allowed for the present month will be expended Friday night, September 25," upon the receipt of which I issued orders to suspend work in the construction department from the 25th to the 1st proximo. On the 26th of September, I received telegraphic orders of same date, from the honorable Secretary, not to stop work in the construction department. September 28, I telegraphed to Bureau of Construction to know what money would be allowed for October. September 29, bureau replied in effect, for same force as in September, and make no additions to the rolls. Soon after the 1st of October, Mr. Easby, naval constructor, informed me that he had been approached by outsiders with inquiries as to why the twenty men required for on the 24th of September had not been taken in. I directed him to reply that the requisition had not been, and would not be, approved by the commandant, there being no funds for their payment. Within a few days afterward, viz, October 7, I received a telegraphic order from the Bureau of Construction to employ twenty additional men. These were the men I had twice refused to approve a requisition for. On October 16 an order was issued by the bureau providing for an increase of force, which order has already been cited. Under this order a considerable increase was made, but I am inclined to think that the largest share of the increase was made subsequent to the 23d of October, at which time the chief of the bureau was in Boston. On October 25 I received a telegraphic order from the honorable Secretary of the Navy to make no suspensions in any department of this yard until further orders, and that money would be furnished on proper requisitions.

It is manifest from this that a suspension I had ordered, and its cause, viz, shortness of funds, was known in Washington. On the 4th of November, the reduction of force began by my order. The bureau issued its order to reduce on the 5th, while the order of the Secretary, of October 25, to make no suspension until further order (virtually an order to make no change), was not revoked or changed until November 13.

I have been thus full and particular in my reply to the bureau's letter, to show that if the increase of force in this yard was unauthorized, the responsibility does not rest with the commandant, as the foregoing recital clearly shows that every effort made by him to prevent an increase and to save money was frustrated by some outside influence more powerful than his own.

Very respectfully, your obedient servant,

ED. T. NICHOLS,
*Commandant.*

Constructor I. HANSCOM, U. S. N.,
*Chief of Bureau of Constr. and Repair, Washington, D. C.*

## PLATT vs. GOODE.—SECOND CONGRESSIONAL DISTRICT OF VIRGINIA.

Charges of fraud, threats, violence, and intimidation, and that the State board of canvassers erred in rejecting county returns for the reason they were not attested by the county clerk.

Held that the abstract of votes is a substantial compliance with the requirements of the statute and, except in lacking the formal attestation of the clerk, is sufficient.

Ballots having been cast for the contestant upon which were printed the words "against the constitutional amendments," it was held that the language of the statute "to open a poll" does not necessarily mean to have a separate ballot-box, nor the words "deposit a ticket or ballot" require that it be separate from the general ticket voted at the election.

Contestee counter-charged the improper sealing and return of poll-books and ballots, illegal voting, and bribery, corruption, and intimidation by undue influences brought to bear upon the employés of the navy-yard.

Held that the errors of a returning-officer shall not prejudice the rights of innocent parties, and where it was the duty of the election-officers to return the votes sealed, a return of them unsealed, in the absence of any proof or suspicion of fraud, is good.

Where illegal votes are proven, without evidence as to whom they were cast for, does not vitiate and render void the whole poll, unless the fraud appears, and that in such cases the illegal votes are to be divided between the candidates in proportion to the vote each received.

When employment is given to make men vote contrary to what they would do, it would be bribery; but there must be proof, first, that men were employed in order to cause them to change their politics; and, second, that they voted, and voted in favor of the party giving the employment.

Majority and minority report submitted.

The resolution presented by the minority was adopted July 28, 1876—yeas, 105; nays, 98; not voting, 81.

The report of committee, as amended, was adopted—yeas, 107; nays, 95; not voting, 82.

Authorities referred to: American Law of Elections, secs. 130, 131, 132, pages 93, 94; sec. 166, page 120, page 12, page 225; Abbott *vs.* Frost, 44th Congress, 1st sess.; Rogers's Law of Elections, page 221; 3d Douglass Election Cases; Howard *vs.* Cooper, Contested Election Cases, 275; Reed *vs.* Julian, Contested Election Cases, 822; Myers *vs.* Moffitt, Contested Election Cases, 564.

July 17, 1876.—Mr. William R. Brown, from the Committee on Elections, submitted the following report:

JAMES H. PLATT, JR.,
*vs.*
JOHN GOODE, JR.

The undersigned members of the Committee on Elections respectfully submit that the vote of the second Congressional district of Virginia, as officially declared, stood: For Mr. Goode, 13,521; for Mr. Platt, 13,390; giving Mr. Goode a majority of 131.

This result is contested by Mr. Platt on the following grounds:

1st. Because the State board of canvassers erred in rejecting the returns from Prince George County, which gave contestant a majority of 425.

2d. That he is entitled to have this majority of 425 votes counted for him.

3d. That 206 votes were illegally rejected in the canvass of Nansemond County, duly cast for the contestant, and for which he claims credit.

4th. He claims a credit of 12 votes illegally rejected in the canvass of the colored precinct of ward 4, Norfolk.

5th. He claims that the whole vote of York County should be excluded on account of fraud, threats, violence, and intimidation practiced by the friends of Mr. Goode.

These allegations are made fully and specifically by the contestant and denied by the sitting member, who also makes counter-charges, which we shall consider when we come to his side of the case.

PRINCE GEORGE COUNTY.

The returns of this county were rejected by the State board of canvassers because they lacked the attestation of the county clerk.

The returns before the State board were as follows:

Abstract of votes of the election held in the county of Prince George, on the third day of November, one thousand eight hundred and seventy-four, for a Representative from the second Congressional district of Virginia, in the Forty-fourth Congress of the United States of America.

James H. Platt, jr., received nine hundred and eighty-seven (987) votes.
John Goode, jr., received five hundred and sixty-two (562) votes.

Given under our hands this fifth day of November, one thousand eight hundred and seventy-four.

B. J. PEEBLES,
T. A. LEATH,
WM. D. TEMPLE,
CHARLES T. ROBERTSON,
*Commissioners.*

STATE OF VIRGINIA,
*County of Prince George, to wit:*

I, Robert Gilliam, sr., clerk of the county court of Prince George, in the State of Virginia, do certify the foregoing to be a true copy of the return of the election for a Representative from the second Congressional district of Virginia to the Forty-fourth Congress of the United States.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 5th day of November, A. D. 1874, and in the ninety-ninth year of the Independence of the United States.

[SEAL.] RO. GILLIAM, SR., *Clk.*

The statute of Virginia, after providing for a board of commissioners to act as county canvassers, provides: "The said commissioners shall determine the persons who have received the greatest number of votes in the county or corporation for the several offices voted for at such election. Such determination shall be reduced to writing and signed by said commissioners, and attested by the clerk, and shall be annexed to the abstract of votes given to such officers, respectively. As soon as the commissioners aforesaid shall have determined the persons who have received the highest number of votes for any office, the clerk shall make out abstracts of the votes in the following manner: * * * * which abstracts, being certified and signed by such commissioners and attested by the clerk, shall be deposited in the office of the latter, and certified copies of abstracts, * * * * * under the official seal of said clerk, shall be placed in separate envelopes * * * and forwarded to the seat of government by mail."

The abstract is a substantial compliance with the requirements of the statute, and, except in lacking the formal attestation of the clerk, is sufficient. And showing as it does that it was the act of the commissioners, by the certificate of the clerk duly attached, it seems to us an arbitrary and unjustifiable course for the State board of canvassers to

have rejected it merely because the same officer who had certified to its correctness had failed to make assurance doubly sure by attesting it.

The statute further provides, "If from any county, city, or town no *such* abstract of votes shall have been received within twelve days next after any election by the secretary of the commonwealth, he shall dispatch a special messenger to obtain a copy of the same from the proper clerk." This he failed to do; and in spite of the fact that the county-seat of Prince George County is within three hours' ride of Richmond, and in spite of the fact that Mr. Platt at the time presented a duly-attested abstract to them, the State board did not have a messenger sent, and adjourn over till his return, but rejected the abstract and gave Mr. Goode his certificate. Such an outrage by high officials, showing as it does a total disregard of the rights of the electors, cannot be too severely condemned. But the wrong having been committed, we have only the power to right it by giving Mr. Platt credit for this majority, which the entire committee unite in doing, saving any consideration in reference to Rives and Bland Townships till we come to the case of the sitting member.

NANSEMOND COUNTY.

In this county 206 votes were rejected by the commissioners for the following reasons: 193 because on the tickets voted for James H. Platt was also printed the words "against the constitutional amendments," and these were not detached, but were deposited in the same box, and 13 votes because folded within tickets for James H. Platt were tickets "against the constitutional amendments," detached, but also voted in the same box.

The statute of Virginia submitting amendments of the State constitution to the people provides "that it shall be the duty of the officers holding the election directed by law to be held * * * to open a poll to take the sense of the qualified voters of the commonwealth.

"At such election each of said voters who shall approve said amendments shall deposit a ticket or ballot on which shall be written or printed."

These provisions are evidently directory, and to hold otherwise would be absurd. Substantial compliance is all that is required. The language "to open a poll" does not necessarily mean to have a separate ballot-box, nor the words "deposit a ticket or ballot" require that it be separate from the general ticket voted at the election. We plainly reach the intention of the voter whether one ballot-box or two be used, and we shall allow to Mr. Platt these 206 votes in Nansemond County. The same reasoning would also apply to the votes in Norfolk, where two ballot-boxes were used—one for the election of Congressman, the other for voting upon the amendments—but where, on the counting of the votes, 12 ballots with the name of Jas. H. Platt, jr., were found in the clause-box, and 12 "against the amendments" in the Congressional box. This was evidently a mistake, and the ballots should have been counted. The very fact that the same number of votes was found in each of the two boxes—that no claim is made that any illegal votes were cast—is sufficient to show it was a mistake, especially when we have seen that the law did not require separate ballot-boxes, and where, as in Nansemond County, we count 206 votes deposited in the same box.

(See, also, secs. 130 and 131 and 132, Amer. Law of Elections.)

YORK COUNTY.

We do not believe the evidence will warrant the rejection of the whole returns from this county. A disgraceful riot between the friends of Mr. Platt and those of Mr. Norton, an independent candidate, the paying of money to Norton by friends of Mr. Goode for the purpose of keeping Mr. Norton in the field as a candidate, and so dividing the negro vote, while they show a bad state of affairs and the depth of the conspiracy to defeat Mr. Platt, no matter by what means, yet they fail to show such intimidation or bribery as would warrant the rejection of the vote of the county.

Allowing to Mr. Platt 425 majority in Prince George, and giving him 206 in Nansemond and 12 in Norfolk, gives him a majority of 512.

CONTESTEE'S CASE.

On the part of the contestee the following counter-charges are made:

1st. Illegal votes cast for Mr. Platt, in every voting-precinct in the district, by minors, non-residents, and persons improperly registered.

2d. Illegal votes cast by persons who were bribed directly or indirectly to vote for Mr. Platt, by the use of a large amount of money which was collected by a heavy assessment upon the officers of the government in the custom-house, upon the employés of the navy-yard at Portsmouth, and the granite-works around Richmond.

3d. Illegal votes cast by ignorant and uneducated negroes who were intimidated by hired agents and emissaries of Mr. Platt, who falsely represented that if Mr. Goode was elected, the colored population would be remanded to slavery.

4th. That at several precincts in the district where Mr. Platt obtained a majority, the poll-books were not signed and sealed, and the ballots were not inclosed and sealed, and the said poll-books and ballots were not conveyed and deposited with the clerks, as the law directs.

5th. Errors of the State board in rejecting and refusing to consider amended returns from the counties of Prince George, Southampton, and Sussex.

6th. That the entire vote of Bland and Rives Townships, in Prince George County, be excluded because the poll-books and ballots at said precincts were not sealed and returned as the law directs, and because in Bland Township one Jno. Palmer acted as clerk, who was a subject of Great Britain and not naturalized, and because a large number of colored persons, at least one hundred, were imported into said townships from Petersburgh and other places in the adjoining districts, and allowed to vote for contestant, thus placing upon the polls the taint of illegality and fraud, so that the result cannot be clearly ascertained.

7th. That the entire vote cast at Court-House precinct and at Stony Creek precinct, in Sussex County; at Bruton Township, York County; at Jamestown precinct, James City County; at Guilford Township precinct, in Surry County; at the Court-House, Talleysville, and Cross-Roads precincts, in New Kent County; in the fourth ward of Norfolk City, should be excluded, on the ground that persons not entitled to vote, who were not registered as required by law, &c., voted, thus rendering the polls void for uncertainty.

8th. That the whole vote cast at Churchland precinct, in Norfolk County, be rejected as illegal and void, because the poll-books and ballots were not sealed and returned as the law directs.

9th. That the whole vote cast at the precincts in the third and fourth

wards in the city of Portsmouth, and at Hall's Corner precinct in the county of Norfolk, be rejected as illegal and void, and not counted, because the poll-books at the said precincts were not certified, signed, sealed, and returned as the law requires, and because the election at the said precincts was influenced by the most glaring fraud, bribery, corruption, and intimidation, and this bribery, &c., is definitely stated as being undue influence brought to bear upon the employés of the navy-yard, to induce them to vote the Republican ticket; and for these reasons Mr. Goode claims he was legally elected. We shall consider these counter-claims in the following order:

1st. The question arising out of the alleged improper sealing and return of poll-books and ballots;

2d. Those having reference to illegal voting; and,

3d. Those pertaining to the navy-yard; under which heads we think all the claims of the contestee can be considered.

### BLAND AND RIVES TOWNSHIPS.

These two townships, in Prince George County, gave Mr. Platt 408 majority. The allegation of Mr. Goode in reference to them is as follows:

Seventh. I shall maintain and insist that the entire vote cast at the precincts or voting-places in Rives and Bland Townships, in the county of Prince George, should be rejected as illegal and void, because the poll-books and ballots at said precincts were not sealed and were not returned to the clerk's office, as the law directs; because, at the precinct in Bland Township, one John Palmer acted as clerk of election, he being at the time a subject of Great Britain, and not a naturalized citizen of the United States, and because a large number of colored persons, at least one hundred, whose names are unknown to me, were imported into the said townships in the said county of Prince George, from Petersburgh and other places in the adjoining district, and allowed to deposit their ballots for you at the said election, thus placing upon the polls at the said precincts such a taint of illegality and fraud that the result cannot be clearly ascertained.

In reference to the charges, except upon the point the poll-books and ballots were not sealed, the evidence is totally insufficient. Even if it were true that John Palmer was a foreigner and unnaturalized, it could make no difference, as we have always decided, if not *de jure* he was a *de facto* officer, and his acts valid. C. T. Robinson, a judge of election in Rives Township, a conservative, testifies that the election was fairly, faithfully, and honestly conducted, and that to his knowledge no man was allowed to vote who was not entitled to. Robert B. Batte, one of the conservative judges in Bland Township, says that the judges of election did their duty as far as they could. Robert E. Bland, who was at Bland Township, swears that he does not think the election was conducted as the law directs, but saw nothing that looked like corruption, criminality, and bad intent. One man voted illegally in Bland Township and one in Rives, and this is the whole testimony. The poll-books and ballots were returned unsealed, and this is the only irregularity we need to consider. We embody here as part of our report the entire argument of Mr. Goode in his brief, showing his whole claim:

*Secondly.* We maintain that the entire vote cast at the precincts in Rives and Bland Townships, in the county of Prince George, should be rejected as illegal, because the poll-books and ballots at said precincts were not sealed or returned to the clerk's office according to law, and also because the votes of *several* colored persons from other counties were illegally received upon transfers on the day of election.

The 23d sec. of ch. 8 of the Code of 1873 provides that "after canvassing the votes in the manner aforesaid, the judges, before they adjourn, shall put under cover one of the poll-books, seal the same, and direct it to the county or corporation court clerk of the county or corporation in which the election is held; and the poll-book thus sealed and directed (together with the ballots strung as aforesaid, inclosed and sealed) shall be conveyed by one of the judges, to be determined by lot (if they cannot otherwise agree) to the clerk to

whom they are directed on the day following the election." The law is peremptory that the judges shall put under cover and seal one of the poll-books, and that the ballots shall be inclosed and sealed. The evidence shows that the poll-books at the two precincts in question were not put under cover, and were not sealed, and that the ballots were not sealed. (Printed Record, pages 63, 393, 398.) It also appears from the testimony (Printed Rec., pp., 398, 401) that several persons voted from other counties on transfers, whereas, under the constitution and laws of the State, they were not entitled to vote until they had resided in the county three months next preceding the election. We submit that these poll-books are so tainted with illegality that it is impossible to ascertain clearly the result of the election.

The evidence shows that five out of the six judges of election in these two precincts were Democrats. Both judges who carried in the returns were Democrats, and the county clerk to whom they were delivered was a Democrat; and it will be noticed that, in his brief, the sitting member claims no irregularity, except that "*several* colored persons" illegally voted, and this leaves but the one question, was the failure to seal the poll-book and ballots fatal? Mr. Goode correctly quotes the law in his brief above quoted, and it will be noticed that no negative words are used making the election invalid unless the judges sealed the returns. Mr. McCrary, in American Law of Elections, pages 93 and 94, thus states the law:

"The language of the statute to be construed must be consulted and followed. If the statute expressly declares any particular act to be essential to the validity of the election, or that its omission shall render the election void, all courts whose duty it is to enforce such statute must so hold, whether the particular act in question goes to the merits or affects the result of the election or not. Such a statute is imperative, and all considerations touching its policy or impolicy must be addressed to the legislature. But if, as in most cases, the statute simply provides that certain acts or things shall be done, within a particular time, or in a particular manner, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not, affect the actual merits of the election." "Those provisions which affect the time and place of an election, and the legal qualifications of the electors, are generally of the substance of the election, while those touching the *recording* and *return* of the legal votes received, and the mode and manner of conducting the mere details of the election are directory. The principle is, that irregularities which do not tend to affect results are not to defeat the will of the majority; the will of the majority is to be respected even when irregularly expressed. The officers of election may be liable to punishment for violation of the directory provisions of a statute, yet the people are not to suffer on account of the default of their agents." And at section 166, page 120, the same author says:

In accordance with the rule that the errors of a returning-officer shall not prejudice the rights of innocent parties, it has been held that where it was the duty of the presiding officer to return the votes *sealed up*, a return of them unsealed in the absence of any proof or suspicion of fraud is good.

In this case there is neither proof nor suspicion of fraud. Every presumption, even, is against it. The officers who returned the votes in both of these precincts were Democrats, and one of them so bitter in his partisanship that he swears that if his errors should elect Mr. Goode and defeat Mr. Platt he should rejoice. Such men do not falsify returns in favor of political adversaries, and the evidence clearly shows that from the time the votes left the hands of the voters till they were canvassed, they were at all times under Democratic control, and to hold that the acts of those officers should destroy the validity of the returns is to give to the party the benefit of the wrong of its own members, and stand as

the offer of a reward for deception and fraud. In the case of Farwell against Le Moyne, the majority of the committee went to the length of deciding that where fraud is proved it must be presumed as having been committed in favor of the party controlling the polls. We still hold to the doctrine to the length that the presumption is that Democrats will not intentionally commit frauds to help Republicans, nor *vice versa*. We shall count these precincts, except the two illegal votes proved. And we append to our report all the testimony in reference to these townships as Appendix A.

ILLEGAL VOTES.

In reference to illegal votes, we shall follow the decision in Finley *vs.* Walls, holding that the mere fact that illegal votes are proved, without evidence as to whom they were cast for, does not vitiate and render void the whole poll, unless fraud appears, and that in such case the illegal votes are to be divided between the candidates in proportion to the vote each received. The statute of Virginia provides for registration of voters as follows: "Ten days previous to the November election the registrar shall sit one day for the purpose of amending and correcting the lists." And this is the last time provided by statute for registering prior to an election, and registration is prerequisite to having a right to vote. The evidence shows illegal registration and voting in several precincts, as follows: At Sussex Court-House Township, in Sussex County, 13. Here the vote stood, Platt 293, Goode 83, which, dividing proportionately, makes the vote stand Goode 3, Platt 10. At Stony Creek precinct twenty-six persons registered and voted for the first time on the day of the election. The statute provides—

Whenever a voter changes his place of residence from one voting-precinct to another, it shall be lawful for him to apply for in person or in writing, and it shall be the duty of the registrar of his former voting-district at any time, whether it be in a township, ward, or voting-place, to furnish, a certificate that he was duly registered, and that his name has since his removal been erased from the registration-books of said voting-district, which shall be sufficient evidence to entitle him to register; and the name of every such person shall be entered upon the registration-book of the township, ward, or voting-precinct to which he has removed, by the registrar at any time, or by one of the judges on the day of election: *Provided,* That in cities or towns containing over 2,000 inhabitants, the name of such person shall only be entered by the registrar on the days provided in the ninth section of this chapter.

The evidence shows that twenty-five of these twenty-six voters were registered on the day of election on transfers, as provided in this section, and that the judges were satisfied that they had resided in the election district three months. We find, therefore, that but one of these votes was illegal, which we subtract from Mr. Platt.

In Jamestown Township, James City County, 16 illegal votes were cast. The vote stood, Platt 136, Goode 78; dividing in the same proportion gives Platt 10, Goode 6. In Bruton Township 3 illegal votes are proved. The vote stood, Platt 203, Goode 88; and dividing in the same proportion gives Platt 2, Goode 1. In Guilford Township the evidence shows that *about* 20 persons illegally registered the Saturday before election. Eight only are identified by the witness, and these eight voted and were illegal voters. Because a man illegally registers on the Saturday before an election is no evidence that he voted on the Tuesday following; hence, we can only consider eight as illegal. The vote stood, Platt 265, Goode 189; and divided in same proportion gives Platt 5, Goode 3. In Nelson Township, York County, 15 illegal votes were cast. The vote stood, Goode 49, Platt 160, Norton 189; dividing *in* same proportion the illegal votes would stand, Platt 2, Goode 6, Nor-

ton 7. Six illegal votes are also proved in different townships, one or two in a place; being unable to divide, as in most if not all of the precincts Mr. Platt got more votes than Mr. Goode, we subtract all from Mr. Platt, which would make the illegal vote stand, Platt 40, Goode 15.

NAVY-YARD.

The contestee asks that the votes of the third and fourth wards of Portsmouth and Hall's Corner, in Norfolk, be excluded. His claim is as follows:

Eleventh. I shall maintain and insist that the whole vote cast at the precincts in the third and fourth wards of the city of Portsmouth, and at Hall's Corner precinct, in the county of Norfolk, should be rejected as illegal and void and not counted, because the poll-books at the said precincts were not certified, signed, sealed, and returned as the law requires, and because the election at the said precincts was influenced by the most glaring fraud, bribery, corruption, and intimidation. In this connection, I will prove that immediately after my nomination for Congress, thirteen or fourteen hundred voters were taken into the government navy-yard at Portsmouth; that they were employed in said navy-yard directly through your agency and that of your recognized committeemen; that they could not obtain said employment without a promise, either express or implied, that they would vote for you; that they were subjected to a heavy pecuniary assessment to enable you to carry on your campaign; that the public service did not require their employment, and the government was thus subjected to a needless and unnecessary expenditure, of at least $75,000, in order to insure your election to Congress; that directly after the election they were nearly all discharged; that a night or two previous to the election they were regularly drilled and instructed as to the manner in which they should exercise the elective franchise; that they were told from whom they should receive their tickets, how they should approach the ballot-box, and how they should hold and deposit their tickets; that on the day of election they were required to receive their tickets from particular persons, and that they were closely watched by said persons from the time they received the same until they were deposited in the ballot-box; that other persons, under whom the said employés worked in the navy-yard, took their position immediately at the ballot-box, for the purpose of supervising the election and checking off the names of the voters as they deposited their ballots; that a large number of the employés in the said navy-yard desired to vote for me, and secured tickets for that purpose, but were intimidated and prevented from doing so by the surveillance practiced upon them by those under whom they worked, and by the fear of losing their places in the said yard, upon which they were entirely dependent for the support of themselves, their wives and children; that such of the employés as had the manliness and nerve to vote for me, in the exercise of their rights as free American citizens, and in defiance of your persecution and tyranny, were immediately discharged from service in the said navy-yard, and informed that they had been so discharged because, in obedience to the promptings of their manhood and the impulses of their patriotism, they had dared to vote against you.

To receive and count votes taken under such circumstances of constraint and duress would be, not only to affix a stigma upon the fair escutcheon of the State, but to inflict a serious blow upon the dearest rights of American citizens. It would be not only a mockery of the elective franchise, but a gross violation of all law, both State and Federal, which regulates the conduct of elections. I shall confidently claim that the entire vote cast at Hall's Corner precinct, in Norfolk County, and at the precincts in the third and fourth wards of the city of Portsmouth, at which precincts the said employés in the navy-yard generally voted, should be rejected by the House of Representatives as illegal, null, and void.

It will be noticed that his whole claim is the exclusion of these three precincts, which voted as follows:

| | Platt. | Goode. |
|---|---|---|
| Third ward | 195 | 157 |
| Fourth ward | 376 | 171 |
| Hall's Corner | 459 | 261 |
| | 1,030 | 589 |

Giving Mr. Platt a majority of 441. As this would not in any event be sufficient to overcome the majority of at least 488, which we have shown for Mr. Platt, we do not deem it necessary to enter so fully into the consideration of the navy-yard matter as we otherwise might.

In reference to this navy-yard, the evidence shows that assessments

were made upon the employés. Many paid and many did not, and there is no evidence to show that any man lost his place because he did not.

Several witnesses swear they paid unwillingly, for the purpose of retaining work. How much was collected is uncertain. How it was used does not appear. We believe that the assessment of employés in the service of the government is demoralizing and wrong, and ought to be made a criminal offense and severely punished. But it cannot in any way affect the result of the election unless it is proved the money was used to corrupt voters and not in legitimate ways. Not a word of evidence appears in the record that the money so raised was corruptly used, and we can conceive of no ground on which to impeach the election that this money was collected.

There were in the navy-yard a large number of hands, white and black. They were there under appointment from Republican officials. The evidence shows a large force was employed during the fall-months of 1874, but not so large as during the corresponding months of 1873. Work was plenty, and this naturally worked to the benefit of the party that had the work to give; but further than this the evidence is very barren that improper inducements or promises were held out. Preference was given by Republican officials to Republicans, but the evidence shows that some known Conservatives were employed, and many voted for Mr. Goode and kept their places. Altogether, the evidence shows that the navy-yard was run just as much in the interests of the party in power and no more than all such institutions usually are. There is no proof that a large number of men were put on to control the election, that Conservatives were employed under promises to vote the Republican ticket. There is no evidence that a single Democrat voted for Mr. Platt on account of the employment he obtained in the navy-yard. The evidence in reference to drilling, &c., shows mere organization on the part of the Republicans; and the intimidation and violence used was by friends of Mr. Goode, who were endeavoring to break down the Republican organization, drive away its challengers, and allow Conservatives whole control.

The case is not nearly as strong as that of Abbott *vs.* Frost, in that there was work to be done. The men employed were not put on within a few days of election, but the force gradually increased for months. Mr. Platt did not recommend the employment of men; the increase was not greater than in prior years. The evidence is paltry and barren in showing undue efforts on the part of Mr. Platt's friends.

The evidence is vague and indefinite. No effort was made by the sitting member to particularize. He acted in reference to this matter as in reference to others, that where illegal votes are proved, be they few or many, the effect was to vitiate the whole election, and he endeavors, both in his proof and argument, to make us determine that some illegal votes were cast, so that we may exclude the returns of entire precincts. We believe that bribery can be committed in the employment of voters in a navy-yard, but the mere fact of employment alone does not prove bribery. If employment is given to make men vote contrary to what they would do, it would be bribery, but there must be proof, first, that men were employed in order to cause them to change their politics, and, second, that they voted, and voted in favor of the party giving the employment. The presumption is in public service that Republicans employ Republicans, that Democrats employ Democrats. The presumption is almost conclusive that men obtaining employment in places controlled by Democrats are Democrats, and in places controlled by Repub-

licans are Republicans, and the employment does not change their politics. If any presumption arises when a man obtains employment in a navy-yard, it is that he is a Republican, and if that be so, the employment does not affect either his vote or the result. Here the employment is the whole evidence of bribery, and is extremely weak—only a link in the chain to prove the charge. Our duty is to act on evidence, not on surmises; to seek fixed data, not make wild guesses, and hence we decline to throw out any portion of the navy-yard vote.

We append a synopsis of the evidence in reference to the navy-yard as Appendix B.

RECAPITULATION.

| | Platt. | Goode. |
|---|---|---|
| Official vote | 13,390 | 13,521 |
| Add Nansemond votes | 206 | ..... |
| Add Norfolk votes | 12 | ..... |
| Add Prince George vote | 987 | 562 |
| | 14,595 | 14,083 |
| Sebtract illegal votes | 40 | 15 |
| | 14,555 | 14,068 |

Majority for Platt, 487.

We recommend the adoption of the following resolutions:

*Resolved*, That John Goode, jr., was not elected and is not entitled to a seat in the House of Representatives in the Forty-fourth Congress from the second Congressional district of Virginia.

*Resolved*, That James H. Platt, jr., was elected and is entitled to a seat in the Forty-fourth Congress as Representative from the second district of Virginia.

WM. R. BROWN.
JNO. H. BAKER.
MARTIN I. TOWNSEND.
G. WILEY WELLS.

I concur in the result of the above report as expressed in the resolutions therein recommended; I also concur in the report respecting the whole of Prince George County, including Rives and Bland Townships, and dissent from the same respecting the third and fourth wards of Portsmouth and Hall's Corner, in Norfolk, those being the precincts in which the navy-yard employés voted; I also find that in no view of the evidence can it be claimed that over one hundred illegal votes were cast in the district outside of the third and fourth wards of Portsmouth, and Hall's Corner, in Norfolk. The vote will stand when properly canvassed, allowing said one hundred illegal votes, and subtracting them from the vote of each candidate in proportion to the number of votes cast for each in the precincts where the illegal votes were cast, thus:

Official report of State canvassers:

| | | |
|---|---|---|
| For Goode | | 13,521 |
| For Platt | 13,390 | |
| Add vote of Nansemond | 206 | |
| Also Prince George County, for Platt | 987 | |
| Which will give Platt | 14,583 | |
| Prince George County, for Goode | | 562 |
| Which will give Goode | | 14,083 |

| | | |
|---|---|---|
| Making a plurality for Platt of | | 500 |
| The vote in the navy-yard precincts stood, as declared, | | |
| For Platt | 1,030 | |
| For Goode | 589 | |
| Plurality for Platt to be subtracted | | 441 |
| Leaving a plurality for Platt of | | 59 |
| The illegal votes, put at 100, and subtracted as above provided, will take— | | |
| From Platt | 64 | |
| From Goode | 29 | |
| From Norton | 7 | |
| Which takes 35 more from Platt than from Goode, and leaves the plurality for Platt | | 24 |

CHARLES P. THOMPSON.

I concur in the above view of the case.

JNO. F. HOUSE.

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## APPENDIX A.

Robert Gillman, sr., clerk of Prince George County, testified as follows:

Cross-examined by John Goode, jr.:

Q. 1. The poll-books from the precincts or voting-places in Rives and Bland Townships have been produced by you; please state who conveyed said poll-books and delivered the same to you, as clerk.—A. Robert B. Batte brought the poll-book, ballots, &c., from Bland Township, and C. T. Robertson from Rives Township.

Q. 2. Were the said poll-books sealed when they were delivered to you?—A. They were not.

Q. 3. When were they brought to the clerk's office; and when were they examined by the commissioners?—A. On the day after the election.

Q. 4. Were the ballots from said township strung together, inclosed and sealed, when they were delivered to you, as clerk?—A. These ballots were strung together, I think, but were not sealed. Those from Rives Township were put in a paper bag and sewed up. The ballots from Bland Township were brought in a tin box, which box was not sealed.

Direct examination resumed:

Q. 1. Who was Robert B. Batte?—A. One of the judges of election in Bland Township.

Q. Who was C. T. Robertson?—A. One of the judges of election in Rives Township.

Q. You have said that both of the poll-books aforesaid from Rives and Bland Townships, respectively, were brought to your office and examined by the commissioners on the day after the election. Do you mean that, now that attention has been called to it?—A. I mean that the poll-books were brought to my office the day after the election, and that they were examined on the second day after the election.

Q. To what political party do you belong, and what candidate for Congress did you support at the election held in November, 1874?—A. I belong to what is termed the Conservative party, and voted for Colonel Goode.

Q. Please answer the same question in respect to the four commissioners, B. J. Peebles, Charles T. Robertson, Thomas A. Leath, and W. D. Temple.—A. I think they all belong to the same party that I do. I do not know how they voted.

Q. Please answer the same question in respect to the judges and clerks of election, whose names are on the poll-books exhibited with this deposition.—A. S. S. Cary, Charles M. Butts, James W. Lucas (I reckon), W. P. Warren, Jackson C. Brown, I think, belongs to the Conservative party, and am pretty certain he voted for Colonel Goode; C. W. Aldridge, William T. Temple, J. M. D. Tatum, John P. Moore, Robert B. Batte, William D. Temple, Ro. E. Bland, F. A. Epps, and E. A. Marks belong to the same party that I do, namely, the Conservative party; John Cogle, Robert Hill, Gabriel Hill, A. R. Sands, and John J. Palmer are reputed to be Republicans. I don't know the politics of J. T. Williams, O. W. Pulley; and further this deponent saith not.

RO. GILLIAM, SR.

*Deposition of C. T. Robinson.*

C. T. ROBINSON, a witness of lawful age, being first duly sworn, deposes and says as follows:

Direct examination by John Goode, jr.:

Question 1. What is your age, residence, and occupation?—Answer. I am thirty-seven years of age, a farmer, and live in Prince George County.

Q. 2. Did you hold any official position under the election-laws of this State at the election which took place on the 3d day of November, 1874, for Representative in the Forty-fourth Congress from the second Congressional district of Virginia? If so, please state what it was.—A. I did. I acted as judge of election in Rives Township.

Q. 3. Were the poll-books and ballots at the precinct in that township sealed and conveyed to the clerk's office, as required by law?—A. They were not sealed.

Q. 4. Do you know of any intimidation of voters in that township on the day of election; or did you see or hear anything calculated to influence the voting improperly? And, if so, please state what it was.—A. In the case of Ben. Faison, a colored man who voted for Colonel Goode, I heard a colored man tell him that he ought to be hung, and all such who voted as he did.

Cross-examination by counsel for Hon. James H. Platt:

Q. 1. How many judges acted at that precinct in that election-district? and give their names.—A. There were two besides myself, viz, Jackson C. Brown and Gabriel Hill.

Q. 2. Were the judges sworn to do their duty?—A. They were.

Q. 3. (Here the counsel for contestant read to the witness the 23d section of the 8th chapter of the Code of Virginia of 1873, and proceeded to inquire why the judges at that precinct, before they adjourned, did not put under cover one of the poll-books and seal the same and direct it to the county-court clerk of Prince George County.)—A. It was late at night, and we had no sealing-wax or anything to seal them with.

Q. 4. Was there no shoemaker's wax in the neighborhood, no flour out of which to make paste, no gum of any sort; no tar, pitch, or turpentine, out of which they could have done their sworn duty?—A. Pegs are generally used in our neighborhood to make shoes, and we had none of the other materials mentioned at the time.

Q. 5. Did they inclose and seal the ballots strung at that precinct?—A. They were strung and inclosed in a paper bag, which bag was sewed up but not sealed.

Q. 6. Was the poll-book which was sent to the clerk inclosed in the paper bag with the strung ballots?—A. It was not; the bag was too small and too short to admit it.

Q. 7. Was it sewed up in any other bag; in a word, how was it inclosed and sent? Describe its inclosure and how fastened.—A. It was rolled up and tied with a string.

Q. 8. Did they have two poll-books?—A. We did.

Q. 9. State what you did with the two poll-books, where they and each of them now are.—A. I delivered one to the clerk of the county, and the other to the clerk of the election.

Q. 10. Then you are one of the judges named who brought one of the poll-books, rolled up and tied with a string, to the clerk of the county, and you deposited the other poll-book, which was not required to be inclosed or sealed, with the clerk of election; was the clerk of election the clerk of Rives Township?—A. He was.

Q. 11. Where does he reside, and where is that poll-book?—A. He resides in Prince George County, and I have not seen it since I delivered it to him; he lives in Rives Township, about three miles from the voting-precinct.

Q. 12. Can that open poll-book be produced?—A. I do not know, but presume it can.

Q. 13. Did the poll-book brought by you to the clerk of the county, tied up with a string, correspond in its list of voters with the other poll-book, which you deposited with the clerk of election?—A. I think it did.

Q. 14. Then if you, being intrusted with bringing one of the poll-books to the clerk of the county, were accused unjustly and falsely of changing that poll-book after it was intrusted to you, could you not show that the accusation was false by comparing it with the other poll-book deposited with the clerk of the township?—A. I think I could.

Q. 15. Did you bring the sewed-up ballots and deliver them to the clerk of the county?—A. I did.

Q. 16. Would they not show, also, whether the poll-books, or either one of them, was correct, and whether they corresponded with the strung ballots?—A. I think they would.

Q. 17. Was the election at the precinct of that election-district fairly and lawfully conducted, and free from any bribery, any corruption or partiality or favor as between candidates?—A. I think the election was fairly, faithfully, and honestly conducted.

Q. 18. Did the judges, as far as you know, permit any man to vote, either intentionally or by mistake, whom they had reason to believe was not entitled to vote?—A. None that I know of.

Q. 19. Do you, or not, now believe that the poll-books which you delivered to the clerk of the county and the clerk of the township contain true lists of lawful voters of the county of Prince George and of Rives Township?—A. So far as I know, they do.

Q. 20. Then, from your statements, I understand the only defect, if any, in the returns of you three judges of that precinct was simply in not inclosing and sealing one of the poll-books, that brought to the clerk of the county, together with the strung ballots. If you know of any other defect in the returns, please to state what that defect was.—A. I know of no other.

Q. 21. Having brought one of the poll-books to the clerk of the county unsealed and uncovered, as you say, you failed to make returns as provided by the 23d section, already referred to, within two days next succeeding the election. Did the clerk of the county then do his duty under the law by dispatching a special messenger to obtain such returns as the law required?—A. There was no messenger dispatched that I know of.

Q. 22. Did the clerk object to your returns because uncovered and unsealed?—A. I don't remember that he said anything about it.

Q. 23. Were you present when the commissioners of that election for this county met at the clerk's office of the county, and proceeded to open the several returns which had been made at that office?—A. I was.

Q. 24. Was any exception then taken by the commissioners, or any one else, to the returns made by you from Rives district, because they were not covered and sealed? Were not all those votes counted and allowed as you had returned them?—A. One of the commissioners said they should have been sealed; but all the votes were counted, and, I suppose, allowed.

Q. 25. Were you a friend of Mr. Goode or Mr. Platt in that election?—A. I voted for Mr. Goode.

Q. 26. For whom did the other two judges vote?—A. One, Jackson C. Brown, voted for Mr. Goode, and the other, Gabriel Hill, voted for Mr. Platt, I think.

Q. 27. Can Gabriel Hill read and write?—A. He can.

Q. 28. Could he read and write well; I mean with facility?—A. I have never heard him read any, and I have seen his writing, which I could read, in a fair hand.

Q. 29. I understand you, then, to say that the only reason why the judges of Rives Township did not return the poll-books and strung ballots to the clerk of the county, covered and sealed, was owing to the reason of the lateness of the hour and the inconvenience at the hour and the place of getting the materials of sealing?—A. Yes; there was no other reason whatever.

Q. 30. Was there any purpose or design, as far as you know, or concert between the judges or between any one or more of them and anyone else, purposely to make defective returns, in order to make Mr. Platt or Mr. Goode lose votes fairly and honestly cast for them or either of them?—A. None that I know of.

Q. 31. Did you and all three of the judges not know that the law required one of the poll-books, together with the strung ballots, to be put under cover and sealed and delivered to the clerk of the county?—A. I suppose they all knew it.

Q. 32. Were you furnished with printed blanks by the clerk of the county?—A. We were.

Q. 33. Were those blanks accompanied by covers and seals?—A. I saw none.

Q. 34. Were there no covers sent with flaps, with mucilage on the flaps?—A. None that I saw.

Q. 35. Name the clerk of the township with whom you deposited the open poll-book?—A. Winfield Aldridge.

Direct examination resumed:

Q. 1 by Hon. John Goode. When the commissioners of election assembled at the clerk's office on the second day after the election to canvass the returns, did you hear the clerk say to the commissioners, or to any one of them, that the poll-books and ballots from Rives Township had not been returned to the clerk's office as the law directs, or anything of that sort?—A. I don't remember that I did.

Q. 2. Did you see Edward D. Bland, a supervisor of the election in Bland Township, on the day the commissioners met at the clerk's office, and, if so, did you hear him say anything to the clerk about signing the returns? If so, state all you heard him say.—A. I saw him, but heard him say nothing to the clerk about signing the returns.

And further this deponent saith not.

CHARLES T. ROBINSON.

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*Deposition of William T. Smith.*

Also WILLIAM T. SMITH, another witness, of lawful age, being duly sworn, deposes and says as follows:

Question 1 by John Goode, jr. Please state your age, residence, and occupation.—Answer. Age, thirty-nine; live in Prince George County, Rives Township; occupation, farmer.

Q. 2. Did you witness any intimidation of voters in Rives Township at the election which occurred on the third day of November, 1874, or did you see or hear anything on that occasion calculated to influence the voting improperly? If so, please state what it was.—A.

Ben. Faison, colored, who voted for John Goode, I did hear said by several negroes, that he and all who voted as he did, of his color, should be hung.

(Counsel for the contestant excepts to this answer, because it does not state that these words were uttered to the voter himself; does not state whether they were uttered to him before or after he gave his vote, nor whether they had any effect upon him of intimidation.)

Q. 3. Was the remark that Ben. Faison and all who voted like him should be hung made in the presence and hearing of other colored voters or not?—A. I suppose that the other colored voters did hear the remark, they being present as I was.

Cross-examined;

Q. 1 by Hon. Henry A. Wise. Were these remarks made to Ben. Faison himself before he voted; and, if so, did they have any effect whatever of intimidating him, so as to make him hesitate, even, about voting for John Goode, jr.?—A. I don't know whether they were made to Ben. Faison himself; he was on the ground; I do not know whether they were made before or after he voted; I don't know whether they had any effect upon him whatever.

And further this deponent saith not.

W. T. SMITH.

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*Deposition of Francis W. Simmons.*

Also FRANCIS W. SIMMONS, another witness, of lawful age, being duly sworn, deposes and says as follows:

Question 1 by John Goode, jr. Please state your age, residence, and occupation.—Answer. Age, twenty-four; residence, Prince George County, Templeton Township; occupation, teacher.

Q. 2. Do you know of any illegal votes that were cast in the county of Prince George at the election which took place on the 3d day of November, 1874? If so, please state all you know on that subject.—A. One Charles Graves, a colored man, voted in Rives Township; lived in Templeton Township; his residence never being in Rives Township; also, that votes were cast in Templeton Township on transfers from other counties on the day of the election.

Q. 3. Were the votes given on transfers from other counties, on the day of the election, cast by white men or colored men?—A. They were colored.

Q. 4. State, according to the best of your knowledge, information, and belief, how many colored men voted in Templeton Township upon transfers from other counties?—A. There were several; I do not know the number.

Q. 5. How do you know that Charles Graves voted in Rives Township on the day of the election?—A. He told me so.

(The counsel for the contestant excepts to the foregoing questions and answers, for the reason that the answers are not specific as to the names of any illegal voters except that of Charles Graves, and he does not give the facts of his knowledge of the illegality of his vote; and he does not specify the number of illegal voters, and the reasons of the illegality of their votes.)

Q. 6. Please examine the poll-book, now in the clerk's office, returned from Rives Township, and state whether or not you find the name of Charles Graves upon it.—A. I have examined said poll-book, and do find the name of Charles Graves upon it.

Q. 7. Did Charles Graves offer to vote in Templeton Township on the day of the election?—A. He offered a transfer from Sussex County to Rives Township, which was refused.

Q. 8. Did he ever live in Rives Township?—A. He never lived in Rives Township, Prince George County. He has always lived in Sussex County.

Q. 9. Did you hold any official position at the election which took place on the third day of November, 1874? If so, please state what it was.—A. I was supervisor of the election in Templeton Township.

Cross-examined by Hon. Henry A. Wise:

Q. 1. Specify any one or more voters who you know to have voted on the day of the election on transfers from any other county.—A. I know them by their faces, but I couldn't call their names if I were to see them. (Here the poll-book was placed in the hands of the witness.) I find on the poll-book from Templeton Township the name of William Ford, colored, who voted on the day of the election upon a transfer from Sussex County.

Q. 2. Could you have named Ford upon your independent recollection without the aid of the poll-book?—A. I could not.

Q. 3. Do you now name him from your recollection or from the poll-book?—A. I can now speak from memory, since it has been refreshed by the memorandum.

Q. 4. Did you object to any of these alleged illegal votes on the day of the election and bring the cases before the judges of election?—A. Voters have always voted in that way, and I thought they were legal; and therefore I did not object.

Q. 5. Are you sure now that, if you had objected, your objections would have been sustained by the judges on the facts which might have been brought before them?—A. It having been the custom, they would not have sustained the objection.

And further this deponent saith not.

F. W. SIMMONS.

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*Deposition of William Taylor.*

Also, WILLIAM. TAYLOR, jr., another witness, of lawful age, being duly sworn, deposes and says as follows:

Q. 1 by John Goode, jr. Did you hold any official position in the election which took place on the third day of November, 1874? If so, please state what it was.—A. I was registrar in Bland Township, Prince George County.

Q. 2. Can you give the name of any person who voted in Bland Township without being legally entitled to vote?—A. John H. Walker, a colored man; he applied to be transferred to Rives Township, in which township he had bought a farm and had been living five or six months. I had delivered the registration-books to the judges of election when he applied, and I could not issue the transfer. I understand that the poll-books will show that he voted in Bland Township.

Q. 3. Please examine the poll-book from Bland Township, now handed to you, and state whether or not you find the name of John H. Walker recorded there.—A. I have examined the said poll-book and do find the name of John H. Walker.

Cross-examined by Hon. Henry A. Wise:

Q. 1. Was John H. Walker entitled to be registered?—A. He was on the registration-books of Bland Township and applied for transfer to Rives Township, and I declined it, because the books, preparatory to the election, had been handed over to the judges. If I had had the books I would have transferred him.

Q. 2. Do you know for whom he voted?—A. I do not.

Q. 3. Do you know whether he voted at all?—A. I do not; only I find his name on the poll-books, and infer therefrom that he voted.

And further this deponent saith not.

WILLIAM TAYLOR, JR.

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*Deposition of Robert B. Batte.*

Also, another witness of lawful age, ROBERT B. BATTE, being duly sworn, deposes as follows:

Question 1 by John Goode, jr. Did you hold any official position at the election which took place on the 3d of November, 1874? If so, please state what it was.—Answer. I was one of the judges of election in Bland Township, Prince George County.

Q. 2. Were the poll-books and ballots from Bland Township inclosed and sealed, and conveyed to the clerk's office, as the law requires?—A. They were not inclosed or sealed; but were delivered to the clerk's office in proper time, rolled up and tied with a string—I mean the poll-books. The ballots were locked up in a box.

Q. 3. Do you know any other fact pertinent to this investigation? If so, please state it.—A. I know that several persons voted from other counties on transfers. Two voters told me that they were intimidated; that they wanted to vote the Conservative ticket, and voted the Republican ticket through intimidation. The names of the voters are Oliver Williams and William H. Garrett. They are both colored men. I also know that John H. Walker, referred to in Mr. Taylor's deposition, voted.

(The contestant, by his counsel, objects to the foregoing answer so far as it relates to hearsay from two of the voters, as without his own knowledge and without his knowledge of the fact whether they told him what was true or false.)

Q. 4. Do you know the names of the persons who voted in Bland Township upon transfers from other counties, or any of them? If so, please give them.—A. I do not know their names; I know the fact from acting as judge.

Cross-examined by contestant's counsel:

Q. 1. Who were the judges appointed in Bland Township?—A. Wm. D. Temple; A. R. Shands, and R. B. Batte.

Q. 2. After the poll-books were signed, did the judges count and ascertain the number of votes cast for each person voted for, were the ballots distinctly read, were the returns made out, signed, and attested?—A. We counted and ascertained them before we signed the books. If it was a scratched ticket the names were distinctly read; if it was a straight ticket, it was called Republican or Conservative. The returns were made out, signed, and attested.

Q. 3. Did you sign and attest any votes that you considered illegal, and were you and the other judges sworn to discharge your duties faithfully?—A. I did not, though I will state that I was doubtful of some at the time. The judges were all sworn.

Q. 4. Did you certify John H. Walker's vote among others that you say now is illegal?—A. We did; I did not know that he was a resident of Rives Township at the time; I thought he was a resident of Bland.

Q. 5. Do you know now that he was a resident of Rives Township?—A. I do not.

Q. 6. For whom did Mr. Temple, one of the judges, vote—Platt or Goode?—A. I do not know.

Q. 7. The election of which did he advocate?—A. I don't know.

Q. 8. Did he not tell you which he favored?—A. He did not.

Q. 9. Is he a Conservative or a Republican?—A. I do not know.

Q. 10. Is he reputed among his friends and neighbors as a Conservative?—A. I have never heard any one say what his politics are.

Q. 11. How did you receive him, as a Conservative or a Republican?—A. I should take him to be a Conservative.

Q. 12. Is Dr. Shands received by you as a conservative or Republican; was he a friend of Goode or of Platt?—A. He was not received for either by me; I don't know whether he was a friend of Goode or of Platt.

Q. 13. Are you a Conservative or a Republican?—A. I am a Conservative.

Q. 14. Did you vote for John Goode, jr., or James H. Platt?—A. I voted for John Goode, jr.

Q. 15. Why did not the judges put one of the poll-books under cover and seal the same? Did you and they not know it was your sworn duty to do the same?—A. There was no material provided for doing so, or none at hand, I know; I do not know what they knew, though.

Q. 16. Was there no mucilage kept in your reach, such as envelopes are sealed with?—A. There was not; we tried to obtain some, but did not succeed.

Q. 17. Were there no pine-trees near, no light-wood knots, no rosin in the pine of Prince George?—A. There were any quantity of pine-trees, but I do not know whether they were making rosin or not.

Q. 18. Were there no tear-drops of turpentine where old scores of light-wood had been got?—A. I did not look to see.

Q. 19. Did you make any paste?—A. We had no material for making it.

Q. 20. You did inclose the ballots and lock them in a box, you say?—A. We did.

Q. 21. What kind of a box?—A. A tin box.

Q. 22. Who took the key?—A. I took the key and delivered it to the clerk of the county with the box.

Q. 23. You, then, were the judge who was selected to convey the poll-books with the ballots to the clerk of the county, were you?—A. I was not particularly selected, but have been so doing for the last two or three elections.

Q. 24. Am I to understand you to say that you were not selected by lot, nor chosen by the other judges of election, to carry the poll-books and ballots to the clerk of the county, but were a volunteer without special authority to do so?—A. I was not chosen by lot, but carried the poll-books and ballots with the knowledge and sanction of the other two judges.

Q. 25. Did you not know that if you did not carry them covered and sealed, as the law requires, that it might invalidate the poll and make void the votes of the people at the election?—A. I did not, as I carried them in the best manner which I could.

Q. 26. Why did you not put the poll-book in the box and lock it up with the ballots; that might have been a substitute for the tar or pitch?—A. For several reasons. I did not consider it my duty to do so. I didn't know the law required it, and the box was full of tickets.

Q. 27. Can you produce that box now?—A. I cannot, as it is out of my keeping.

Q. 28. What did the judges do with the other poll-books?—A. Both were delivered at the clerk's office of the county; one directed to the clerk of the county, and the other to the clerk of the township.

Q. 29. Did you call the attention of the clerk of the county to the fact that the poll-book delivered to him was not put under cover and sealed, or did he notify you of the omission?—A. There was some remark made by the clerk and myself; the fact was talked about by me and the clerk, and I stated to him why I did not put it under seal.

Q. 30. Did he dispatch any messenger to the judges to obtain inclosed and sealed returns?—A. Not to my knowledge.

Q. 31. To whom were a majority of the votes of the township cast, for Mr. Goode or Mr. Platt?—A. The poll-book says Mr. Platt.

Q. 32. Do you not now know that the fact that the three judges, yourself among the number, omitted to do your official duty, put under cover and seal the poll-book, together with the ballots, and direct and deliver them to the clerk of the county, is made the ground for invalidating the votes cast for both members of Congress, and for making void the majority cast for James H. Platt, jr., in Bland Township?—A. We did our duty as far as we could. I do not know what use will be made of my evidence.

Q. 33. Do you not know that Mr. Goode is now examining you, and that I am now cross-examining you, about the fact whether these poll-books and ballots were put under cover, sealed, and delivered to the clerk at the time of election?—A. I do know that I am now being examined on that subject.

Q. 34. Do you not know that he is contending that unless they were sealed and put under cover, they shall not be counted?—A. I do not know what he contends.

Q. 35. If the omission of the judges in Bland Township and in Rives Township to put under cover and seal one of the poll-books and ballots of each of those townships shall cause James H. Platt to lose a majority of three or four hundred votes in Prince George County, and thereby cause John Goode, jr., to be adjudged entitled to a seat in the Forty-fourth Congress, from this second Congressional district of Virginia, will you not rejoice in the result?

(Question objected to as irrelevant and immaterial to this issue.)

A. I will rejoice.

Q. 36. Were you looking for the reward of great joy when, as one of the judges of Bland Township, you brought one of the poll-books of that township not put under cover, and not sealed as the law requires?

(Objection repeated for the same reason.)

A. I was not. I did not know or think that there would be a contest in the matter.

Q. 37. Whether you knew or not that there would or not be a contest in the matter, was it the purpose of yourself or the judges, or any one of them, to make a defective return, so that it might avail in favor of John Goode in the event of any contest?

(Objection repeated for same reason.)

A. It was not my purpose, nor of any other judges, to my knowledge or belief.

And further this deponent saith not.

ROBT. B. BATTE.

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*Deposition of James R. Young.*

Also, JAMES R. YOUNG, a witness of lawful age, being duly sworn, deposes and says:

Question 1, by John Goode, jr. Do you know of any illegal votes that were cast by any persons at the election which took place on the 3d day of November, 1874? If so, state all you know on that subject.—Answer. I do. I know of Charles Graves, who lived in Templeton Township and voted in Rives Township, and Tom Taylor, who lived in Blackwater Township and voted in Rives. They were both colored.

Cross-examined by Hon. Henry A. Wise:

Q. 1. How do you know that?—A. The poll-books will show it.

Q. 2. Will the poll-book show where they resided?—A. I think not, sir.

Q. 3. For whom did they vote?—A. I don't know, sir.

Q. 4. If they had resided in one township and voted in another, do you know that they had not been legally transferred?—A. I know that one of them was registered in Rives Township; the other lived in Templeton Township, and came with a transfer from Sussex County to Rives Township.

Q. 5. Do you know that the first was not transferred and registered in Rives Township?—A. I don't know that he was not transferred or not; I know that he was registered in Rives.

Q. 6. Do you know whether the second person whom you have named was not transferred and registered in Rives?—A. I suppose that Charles Graves was not registered in Rives, as he came to Templeton with a transfer from Sussex County, and offered to vote in Templeton on his transfer, and he afterward voted in Rives, as the poll-books will show.

Q. 7. Were you at Templeton district and at Rives district on the same day?—A. I was not.

Q. 8. How do you know, then, of your own knowledge, that he voted at Rives?—A. Because I saw his transfer in the registrar's hands.

Q. 9. Transfer from where to where?—A. From Sussex County to Rives Township.

Q. 10. When did you see that transfer, and in what registrar's hands?—A. After the election; in the hands of H. C. Southall.

Q. 11. Where at?—A. At Rives post-office, at his residence.

And further this deponent saith not.

J. R. YOUNG.

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*Deposition of W. C. Belscher.*

Also, W. C. BELSCHER, another witness, of lawful age, being duly sworn, deposes and says as follows:

Question 1 by John Goode, jr. Do you know of any illegal votes that were castin

election last fall for a member of Congress from this district? If so, state all you know on that subject.—Answer. I know one, Dick Allen, a colored man, who left the county in August, 1874, and returned Saturday night after the registration was concluded. He voted at Blackwater Township.

(The counsel for the contestant objects to this answer, because no notice has been given except as to the townships of Rives and Bland.)

Cross-examined by Hon. H. A. Wise:

Q. 1. Do you know whether Dick Allen voted or not?—A. The poll-books will show.

Q. 2. Do you know for whom he voted?—A. I do not.

And further this deponent saith not.

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W. C. + BELSCHER.
mark.

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*Deposition of William D. Temple.*

Also, WILLIAM D. TEMPLE, another witness, of lawful age, being duly sworn, deposes and says as follows:

Question 1 by John Goode, jr. Do you know of any illegal votes that were cast in the election last fall for a member of Congress from this district? If so, please state what you know on that subject.—Answer. I know of one voter under the age of twenty-one who voted. He was a colored boy, and his name is Jeff. Stiles. He was a former slave of my father. He voted at Sherman's Cross-roads, Bland Township.

Q. Did you witness any intimidation, or hear any threats from any quarter in regard to the conduct of the election? If so, tell all about it.

(Question excepted to by contestant's counsel as being too general and indefinite.)

A. I heard several negroes in Bland Township threaten to put the judges out of the house, and put in others, if we did not let a negro vote, who was not registered.

Cross-examined by contestant's counsel:

Q. 1. Were you one of the judges of election of that district?—A. I was.

Q. 2. Name the persons who threatened the judges as you have said.—A. I can't name them; I didn't see them; I only heard the threats.

Q. 3. How many did you hear make the threats?—A. I don't know that it was but one.

Q. 4. Was he out of doors and the judges in doors?—A. He was out doors and I was in the house.

Q. 5. Did you see him when he made the threat?—A. I did not.

Q. 6. Are you sure you heard what he said distinctly?—A. I am.

Q. 7. Did he intimidate you and the other judges?—A. I cannot answer for the other judges; I was not intimidated; the other judges did not express any intimidation; one of them, Dr. Shands, was very deaf, and I do not know whether he heard it, and Mr. Batte, the other judge, is a man not easily frightened.

Q. 8. Why did the judges of Bland Township not, before they adjourned, put under cover and seal one of the poll-books, and direct it, together with the ballots, to the clerk of the county?—A. Because we had nothing to seal them with.

Q. 9. Which one of the judges was ordered to take the poll-book and ballots to the clerk of the county, or was one of them directed?—A. Mr. Batte was requested to take the book and ballots to the clerk.

Q. 10. Why did you not put the poll-book under cover? Had you no paper?—A. It may have been put under cover; I do not know whether it was or not; I don't think we had any paper; I was a Conservative and voted for Mr. Goode.

And further this deponent saith not.

WILLIAM D. TEMPLE.

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*Deposition of A. R. Shands.*

Also another witness, A. R. SHANDS, who, being duly sworn, deposes as follows:

Question 1 by John Goode, jr. Do you know of any illegal votes that were cast in the election last fall for a member of Congress from this district? If so, please state all you know upon that subject.—A. I challenged a vote of a colored man named John Anderson. His family, he told me, resided in Chesterfield County, but he was a section hand on the City Point Railroad. He had been living on the adjoining farm within one mile of me in Bland Township. His family had removed, but he still lived in Bland Township. He was registered in Bland Township and was not transferred, but I considered him an illegal voter,

because his family had moved out of the county. I voted against him as one of the judges of election, but the other judges overruled me. I also challenged the vote of Mr. Blanks, a depot agent at City Point, because his name was registered on the registration-book without giving his age, residence, or anything else. He was allowed to vote because he was known to be a resident of the county. He was a white man and voted the Conservative ticket. I voted for Mr. Goode for Congress; I voted for General Grant for President; Judge Batte appointed me judge of election under the impression that I was a Radical.

And further this deponent saith not.

A. R. SHANDS.

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*Deposition of Robert E. Bland.*

Also another witness, of lawful age, ROBERT E. BLAND, being duly sworn, deposes and says as follows:

Question 1 by John Goode, jr. Do you know of any informality, irregularity, or illegality at the election which was held on the 3d day of November, 1874? If so, state all you know on that subject.—Answer. I do; I was clerk of the election in Bland Township, Prince George County; I saw a name changed from Cogle to Cargill, and allowed to vote under that name; I protested against it on the ground that the judges of the election had no right to change the registration-books. It is proper to say that we have Cogles and Cargills in this county; the name was changed from Cogle to Cargill. I saw the ballots counted; most of the ballots were doubled, one wrapped up in the other; the small ones were thrown out and the large ones counted. One of the judges of election counted the ballots for a while, and then the Federal supervisor of election counted them for a while, and then Mr. Batte, a judge of election, counted. I mean he read the names on the ticket. Whenever it was a straight Conservative, he said Conservative, and whenever it was a straight Republican ticket he called it Republican. When the ballots were first counted it seemed that there was one too few; when they were tallied up there were four too many, which were destroyed by the consent of the judges of election. The books and ballots were not sealed, but the tickets were strung and locked up in a tin ballot-box. The other clerk was a man by the name of John Palmer, who is reputed to be an alien: whether he is or not, I don't know; I know that he is a married man. Those are all the irregularities and informalities that I now remember. In regard to intimidation, there was a negro at my house who asked me for a Conservative ticket. He told me he did not vote it, because the pressure was so hard he was afraid to do it. His name was Thomas Pollard.

Cross-examined by Hon. H. A. Wise:

Q. 1. Are you certain that the name that you say was changed was spelled Cogle on the registry?—A. I am not; but am certain that the first syllable of the name was changed from Co. to Car.

Q. 2. How was the other part of the name spelled, and was that changed?—A. I did not examine the registration-books; but heard the judges of election agree to change it from Cogill to Cargill.

Q. 3. Did they spell it C o-g-l-e or C-o-g-i-ll?—A. I do not know.

Q. 4. Did you see that name on the registration-book?—A. I did.

Q. 5. Why do you not know, then, how they spelled the name, last syllable as well as first, and how can you pretend to say what change they made in the name when you do not know how it was first written?—A. I know how it was first written, and have never said that I did not. It was written C-o-g-l-e; to what it was changed, I do not know.

Q. 6. Did you not say a little while ago that you did not know whether it was g-i-l-l or g-l-e, but that you did know the C-o was changed into C-a-r in the first sylable?—A. In reference to the word Cargill, I did; I did not see the name after it was changed; they did change it, though I do not know how they spelled it.

Q. 7. Please tell the clerk how the name was spelled on the registry, and then tell him how the name was spelled to which it was changed.

(Here the witness refused to answer the question upon the ground that he had already answered it before, and appealed to the judge to know if he could be required to answer it again, and the judge said he could not be required to answer it again, because he had already answered it.)

Q. 8. If you did not see the name to which Cogle was changed, how can you say, of your own knowledge, that it was changed to Cargill?—A. Because I heard the negro say that his name was Cargill, and I heard the judges of election direct it to be changed to Cargill, and he voted on that name.

Q. 9. And I understand you to say that you do not know how they spelled the name Cargill, whether it was Cargill or Cargle?—A. I do not remember.

Q. 10. What occasioned the change of name: why was it made?—A. Becau e the name of Cargill could not be found on the registration-books.

Q. 11. How do you spell the name Cargill, as you sound it, which could not be found? A name spelled, how did you look for?—A. I did not look for the name, but I would spell it C-a-r-g-i-l-l.

Q. 12. Then am I to understand you that, of your own knowledge, you do not know how the name was spelled on the registration-book to which thereon the name Cogle was changed?—A. I do not remember.

Q. 13. Who first called attention to the fact that the name Cogle was not the correct name, but that it ought to be spelled or sounded otherwise?—A. I do not know. If my memory serves me, Mr. Temple, one of the judges of election, kept the colored registration-book. He stated he could not find the name Cargill, but had found Cogle, and the judges, supposing him to be the same man, changed his name on the registration-books.

Q. 14. Did not the colored voter himself claim that his name was the name sounding Cargill, and not Cogle?—A. He did.

Q. 15. Was he not identified and recognized by the judges by that name?—A. He was identified by the judges by the name Cargill, and not Cogle, as they said.

Q. 16. Was he not a legal voter?—A. I presume not, as his name was not on the registration-books.

Q. 17. Do you mean to say that if a man's name is registered incorrectly on the registration-books that it cannot, in its spelling and sound, be corrected, if he can be identified as the person whose name was incorrectly entered on the registration-book? For example: Suppose the name of John Goode, jr., was entered by the registrar at Norfolk as Good, and John Goode at the polls could show that he was the person meant by the entry in that name, but that his name was spelled Goode, with the long sound of Goode, instead of the short sound of Good. Would you say that he was not a legal voter because his name was incorrectly spelled upon the registration-book? Is that what you mean?—A. That is a question, I presume, which the courts ought to decide, on which I am not informed.

Q. 18. Was any objection made to the change in the spelling of the name at the time on the registration-book?—A. I objected to the change of the name, but not to the spelling; I knew nothing about the orthography.

Q. 19. Was the thing done openly, fairly, and above-board, whether decided right or wrong?—A. It was done openly and above-board.

Q. 20. Were the judges who decided and overruled your objection not each and all friends of and voters for Mr. Goode?—A. I do not know of my own knowledge.

Q. 21. Have you not heard each of them so swear here in this room to-day—Mr. Batte, Mr. Temple, and Mr. Shands?—A I have not.

Q. 22. Were you a friend of Mr. Goode's or Mr. Platt's in that Congressional election?—A. I was a friend of and voted for Mr. Goode.

Q. 23. What was the first name of Cargill, the colored voter?—A. I am now informed by Mr. Temple that his first name is Benton, and recollect that he did vote by that name.

Q. 24. Could not he be partly identified by the name of Benton as well as of Cogle or Cargill?—A. I never saw him before, and did not know him.

Q. 25. Did others around know him?—A. I do not know.

Q. 26. How many ballots were polled at Bland Township?—A. I do not remember.

Q. 27. How many were folded the one into the other?—A. I never counted them, and consequently did not know.

Q. 28. How many little ones were thrown out?—A. Several; the exact number I do not know.

Q. 29. Were all found folded one within the other thrown out?—A. When the large ones and small ones were found together, the small ones were thrown out, and the large ones put in the ballot-box. In my answer to the first question-in-chief, if I said the most of the ballots were double, I wish to correct it, and say I meant to say many were double.

Q. 30. What proportion would you say were double?—A. I had no means of ascertaining.

Q. 31. Please look at the poll-list of Bland Township and see how many votes were polled.—A. Upon examination of the poll-book, I find that four hundred and fifty-six votes were polled: for Platt, 352; for Goode, 104.

Q. 32. Were one hundred of the four hundred and fifty-six votes thrown out?—A. I have no idea in the world how many were thrown out. I saw a large pile of them down there.

Q. 33. As many as fifty?—A. I did not count them.

Q. 34. Were there more than ten?—A. I did not count them.

Q. 35. Were there more than five?—A. I did not count them. I saw a pile of them, and I do not know how many there were.

Q. 36. Were there more than two, or as many as two hundred?—A. I think there were more than two, but I do not know whether there were more or less than two hundred. There was a pretty big pile of them.

Q. 37. You have spoken of the little ballots and the large ballots; were the little ones folded in the large ones?—A. I think they were.

Q. 38. What did you understand the large ballots, and what did you understand the

little ballots to be?—A. The small ballots were for or against the amendments to the constitution, and the large ones for members of Congress and other officers—those that I saw circulated outside of the house during the day. I did not look at the ballots that were thrown out.

Q. 39. Did I understand you correctly as saying that the small ballots were thrown out and not strung, and that the large ones were put in the ballot-box and were strung?—A. You did.

Q. 40. Then you do know that those that were thrown out were the small ballots, do you not?—A. All the small ones were thrown out before and four of the large ones after the poll-book was tallied.

Q. 41. In all the ballots which you saw used in voting at this election did you see the votes for Congress printed or written on any of the small tickets?—A. I did not read any ticket that came out of the ballot-box. I did not see the votes for member of Congress written or printed on any of the small tickets which I did see.

Q. 42. For whom were the four big tickets cast which were thrown out after the ballots were counted?—A. I did not read them myself. The judges of election announced in my presence that there were two for John Goode, jr., and two for James H. Platt, jr.

Q. 43. Were the judges of election all present, and fairly and vigilantly attending to the counting of the votes; and was the election conducted fairly?—A. The judges of election were all present. I do not think the election was conducted as the law directs.

Q. 44. Did you see anything like corruption, criminality, or bad intent on the part of the judges?—A. I did not.

Q. 45. Why was not one of the poll-books put under cover and sealed, and, together with the ballots, inclosed and sealed, directed to the clerk of the county?—A. Because there was nothing with which to cover or seal them.

Q. 46. Were you at the dwelling-house, store, or tavern?—A. I was not; I was at the township voting-house, a house sitting off by itself in the forks of a road; there was not even a fire-place in it.

Q. 47. How near was the nearest tavern, or store, or dwelling-house?—A. There was a dwelling in four hundred to six hundred yards. The nearest tavern or store is at this place, about three miles.

Q. 48. Had you horses at the place with which you could have sent messengers after sealing-material?—A. I had a horse, but no messenger; I know Mr. Batte had a horse, but do not think he had a messenger or funds furnished to buy sealing-wax.

Q. 49. Could not one of the judges have walked to the dwelling-house near by, and was it a house of respectable people, who probably had either waste-paper or wrapping-material of some sort with which to cover the poll-books, either by sewing them up or pasting their covers? In a word, was any effort whatever made, by either the judges or the clerks, to take with them the necessary means of complying with the law, or to procure those means after arriving at the place of canvassing the votes?—A. One of the judges could have very easily walked to the nearest house. Its occupant is reputed to be one of Mr. Platt's white supporters; he was applied to for the necessary material and could not supply it. As a clerk of election, I made no effort, not thinking it my duty.

Q. 50. At what time of the evening did you finish counting the votes?—A. I do not remember the exact hour. I suppose about two hours and a half after sunset.

Q. 51. You say in your answer to the first question in chief that the other clerk "was a man by the name of John Palmer, who is reputed to be an alien; whether so or not I do not know." Of what foreign country is he supposed to be a citizen?—A. I have heard that he is from Canada.

Q. 52. Do you know or did you hear under what circumstances he came to this country?—A. I never did.

Q. 53. How long has he been in this county, or in the State of Virginia; do you know?—A. I do not.

Q. 54. Do you know whether he came to the United States with his parents, whether he was of age, or whether he came here an infant of tender years?—A. I know neither.

Q. 55. What do you suppose to be his probable age now?—A. He looks to be a man of between twenty-five or thirty years of age. His father, here present, says that he is twenty-three or twenty-four years of age.

Q. 56. You say, "I know that he is a married man." Did he marry in this county; and how long ago?—A. He did marry in this county, and the clerk of the county who issued his license says that it was issued about two years ago, and I believe that it is correct.

Q. 57. Is his father now a resident of this county?—A. He is, sir.

Q. 58. Please look upon the paper in the following printed and written words, to wit:

"UNITED STATES OF AMERICA,

"*State of New York, Niagara County, ss:*

"Be it remembered, that on the 15th day of October, in the year of our Lord one thousand eight hundred and sixty-four, George Palmer, late of England, at present of Niagara County, in the State of New York, appeared in the county court of Niagara County (the said court being a court of records, having common-law jurisdiction, and a clerk and seal), and applied

to the said court to become a citizen of the United States of America, pursuant to the directions and requisitions of the several acts of Congress in relation thereto. And the said George Palmer having thereupon produced to the court such evidence, made such declarations and renunciations, and taken such oath as are by the said acts required, thereupon it was ordered by the said court that the said George Palmer be admitted, and he was accordingly admitted, by said court to be a citizen of the United States of America.

"In witness whereof the seal of the said court is affixed this 15th day of October, in the year one thousand eight hundred and sixty-four.

"[NIAGARA COUNTY SEAL.] W. S. WRIGHT,
"*Clerk.*"

and say whether the same appears to be a genuine and authentic document under official , as it purports to be.

(Question objected to because the paper referred to furnishes no legal evidence of the naturalization of John Palmer, the clerk of the election.)

A. It has the appearance of an authentic document.

Q. 59. What was the name of the negro who you say, at your house, asked you for a Conservative ticket, and who told you that he did not vote it because the pressure was so hard that he was afraid to do it?—A. Tom Pollard.

Q. 60. Where is he now?—A. He lives at my house.

Q. 61. What pressure did he say was brought to bear upon him, and by whom?—A. The answer to the last question was all he said to me about it.

(Here the counsel for the contestant gave notice that the production of the registration-book of colored votes of Bland Township will be required, and is required, as the highest evidence of the entries and changes of entries made therein.)

And further this deponent saith not.

ROBERT E. BLAND.

Adjourned until to-morrow morning, 10 o'clock.

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MARCH 31, 1875.—In pursuance of adjournment, depositions resumed.

*Deposition of William Taylor, jr.*

At this point, by consent of parties, WILLIAM TAYLOR, jr., the registrar in Bland Township, appeared with the registration-book, and made the following statement in regard to name of Benton Cargill:

Prior to the name being changed, I think it was spelt C-o-g-e-l-l, and when changed it was spelt C-a-r-g-i-l-l.

Mr. Goode declining to ask any question, Mr. Wise proceeded to examine the witness:

Question 1. Is the name on the registry Cargill Benton?—Answer. Yes.

Q. 2. When it was originally entered by you it was written "Cogell Benton;" when thus written, was it in pale ink or dark?—A. It was in pale ink.

Q. Please name the letters as they now appear on the registration-book in pale ink, which you can still distinctly make out.—A. I can make out the capital C, the little o, the g, and the double l, distinctly, and the e indistinctly. The surname Benton, written last on the registration-book, stands as it was originally entered, and is in pale ink distinctly written.

Q. 4. What letters in name "Cogell" were changed, and into what letters were they changed?—A. The little o was changed into a, the g into r, the e into g, and between the first l and the new g the letter i was put, so that the name read, when changed, C-a-r-g-i-l-l, which was at first C-o-g-e-l-l. The ink in which the change was made is dark purple, very different from the color of the ink in which the name was originally written.

Q. 5. Was the man whom you registered under the name of "Benton Cogell" the same man who appeared at the polls in Bland Township and voted under the name "Benton Cargill"?—A. He is the same man. I spelled his name wrong when I entered it, but according to the best of my knowledge; and it seems that it was afterward corrected, and he voted in the name as it was corrected.

Q. 6. Was he registered in the time prescribed by law?—A. Yes; and he was a legal voter.

And further this deponent saith not.

WILLIAM TAYLOR, JR.

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## APPENDIX B.

*Testimony in regard to assessments of navy-yard employés.*

1. Witnesses summoned by Mr. Goode—Jesse Mahony, p. 255. That he paid $2 unwill-

ingly, and *believes* his vote for Mr. Goode had something to do with his discharge. On p. 487, question 4: His foreman, P. McDonough, testifies that in August, before the election, Mahony voluntarily gave him a dollar to be used for election purposes, and told him if he wanted any more to come to him.

2. James H. Shannon, p. 258, paid $3.25 unwillingly.

3. George W. Glover, p. 266, notified men verbally of assessment—no written notice; paid $2 to his foreman, John Callahan, unwillingly, and from fear of consequences.

4. William J. Richardson, p. 269, paid $3.25 unwillingly.

5. J. W. Rutter, p. 277, assessed $7.50; did not pay anything.

6. James Storrs, p. 279, paid $3.25 unwillingly, and because some others paid it; was not required, if he didn't pay, to state the reason why.

7. David Williams, p. 280, paid $3, because he thought it was for his pecuniary interest to do so.

8. R. H. Anderson, p. 306, refused to pay anything.

9. Francis Russ, p. 309, paid $3.26 unwillingly.

10. James Meads, p. 316, paid $3.26 willingly, and question 13: The men did not respond generally to the assessment made.

11. Thomas Dalton, p. 336, was not assessed, and did not pay. Question 13: Never heard McDonough, his foreman, ask any man to pay. Questions 16 and 17, cross-examination: Never saw him make any collection.

12. B. F. Rosson, p. 346, paid $1 or $2 unwillingly.

13. William Smith, p. 358, paid $20 willingly; would have paid it whether assessed or not, and, question 11: The assessment was not compulsory. It was a voluntary act so far as he knew anything about it.

14. William R. Webb, p. 349, paid a day's pay unwillingly.

15. Richard H. McClean paid $20. Not more than one-third of the men in his department paid anything.

16. Henry S. Perkins paid $20: p. 361.

17. Laban J. Smith, p. 362: Paid $20.

18. John L. Porter, p. 363: Paid assessment, out of respect to his foreman.

19. V. O. Cherry, p. 367: Refused to pay.

The above are all the witnesses summoned by Mr. Goode who testify on the subject of assessments.

*Testimony of witnesses summoned by Mr. Platt on cross-examination by Mr. Goode.*

1. William Smith, page 99: Paid $2 of his own will; never saw circular, and no assessment was made on him.

2. William Teemer, pages 106 and 107: No assessment put on him; paid from a sense of duty; never saw circular: heard of it, and then heard it contradicted.

3. Direct examination of William F. Allen, Conservative superintendent, pages 114 and 115: Money was collected from Conservative corporation and State officers. His understanding was that a man was not worthy to hold office under the Conservative party unless he was willing to contribute money to help the Conservative cause.

4. George E. Crismond, page 141, question 24: Cross-examination: Did not pay anything because he was short of funds.

5. Barney Rutter, page 155: Paid $2 willingly and without solicitation; saw no circular.

6. Leroy Peed, page 157: Paid $2.50; knows a great many men who did not pay.

7. John Callahan, pages 177 and 178: Paid $20 voluntarily, and when he received the circular showed it to workmen and said whatever they felt like paying on that list to pay it. Some paid and some did not, and that was the end of it.

8. Joseph T. Wilson, page 261: Paid nothing.

9. John A. Foreman, page 456: Knows men in yard who refused to pay and are still employed; did not see circular, and never knew a compulsory assessment by Republicans.

10. John Callahan, page 482, question 14: It is not true that all workmen in machine-shop were assessed or paid assessment.

*Testimony on the manner in which employment in navy-yard was obtained—witnesses summoned by Mr. Goode.*

1. Jesse Mahony, p. 255, question 11, says he could not get employment in the navy-yard without a promise, express or implied, that he would vote the Republican ticket; and, question 13, that the workmen had to be indorsed by the Republican committee. Does not testify that he ever promised, or was asked to promise, to vote the Republican ticket; and, question 5, that he never got any letter or recommendation from committee or any member thereof; and, question 1, cross-examination, that he was employed from March, 1873, until April, 1874; and, question 14, shows that he was again employed and discharged November 11, 1874.

2. George W. Glover, p. 266, questions 16 and 17: As a general thing they were employed by the committee as a whole or the chairman thereof, and that an impression was made on their minds that not to vote for Mr. Platt would incur the displeasure of those who controlled the employment of men in the yard. Does not say he ever promised, or was asked to promise, to vote the Republican ticket, or ever asked a committee for a recommendation.

3. William J. Richardson, p. 269, question: Conversation with William F. Smith. He (Smith) *did not say* but I *supposed* he meant, you must come recommended from the Republicen executive committee; and, question 2, cross-examination: Was employed by William F. Smith, foreman of shipwrights. Questions 5 and 7: Never conversed with any one about his politics, and never asked committee for recommendation. Does not say he ever obtained recommendation of any committee, or ever promised, or was asked to promise to vote the Republican ticket.

4. Dale B. Luke, p. 271, cross-examination, question 4: Applied to William F. Smith in May, 1874, for work. Afterward met Edward Lookins, who told him the committee had very little influence in the yard, and he had better go to Mr. Platt in Norfolk, and ask him for employment. He replied, "I told him that if I never get any work in the yard until I go to seek it from Mr. Platt, I would never get in the yard;" and, furthermore, told him that I would not promise or bind myself to vote for any man in that way; was employed about three weeks after this conversation.

5. J. W. Rutter, p. 278, question 28: For the last four or five years it has been customary to obtain employment in the yard through the Republican executive committee; does not say how he obtained employment in the yard for himself.

6. William E. Carhart, p. 298; Was employed through the recommendation of Mr. Lee, chairman of the Norfolk County Republican committee: does not say any promise was made or required.

6. R. H. Anderson, p. 307, cross-examination: Asked William H. Lyons, master-mechanic, for employment, and got it. Does not say he ever asked any committee for indorsement, or made any promise.

7. E. B. Holloman, p. 312, question 13: If he were an applicant for employment in the navy-yard, would prefer recommedation of the Republican committee.

8. James Meads, p. 316, question 15: As a general thing, the selection of men who work in the yard is controlled by the Republican executive committee. Does not say how he was employed himself, or that he made or was asked to make any promises.

9. B. F. Rosson, p. 347, question 7, cross-examination: He went to see Mr. P. C. Asserson, through the advice of Laban Smith, a leading Republican. "Was speaking to him about a job of work, and asked him if he thought I could get into the navy-yard, *as he knew I was a Conservative*. He told me to go over and see Mr. Asserson, and probably I could get a job. I went over to see him, and after that heard that my name was to be called," *i. e.*, that he was employed. Does not say he made or was asked to make any promise; on the contrary, does say he told Smith he was a Conservative.

10. William R. Webb, p. 350, question 6: Nobody asked him whether he was a Republican or not, and, question 9, that to his knowledge no such question was asked others.

11. William F. Smith, p. 358, question 6: Would not employ men recommended by committees unless they were good mechanics; if they were not good men would not take them. Have heard complaints of the large number of Conservatives employed in the yard when good Republicans were walking about doing nothing.

12. Richard H. McClean, foreman of boat-builders, page 360, question 13: The men in his department during the campaign were not generally employed at the request and recommendation of the Republican executive committee; and question 2, cross-examination, men were not taken on or discharged on account of their politics.

13. Henry L. Perkins, foreman of ship-joiners, page 361, question 3, cross-examination: No men were discharged from his department, or warned that they would be discharged, either on account of their politics or failure to contribute money for campaign purposes.

14. Laban J. Smith, foreman of house-joiners, page 362, question 4: A portion of the men in his department were employed on recommendation of the Republican executive committee. Question 3, cross-examination: No threat was made or men discharged either for voting for Mr. Goode or failure to contribute money (to his knowledge). He thinks men known to be Conservatives were sometimes recommended by the Republican committee.

15. V. O. Cherry, page 366: Was out of the yard and reported as being a Conservative and abusing the administration. Mr. Clements, chairman of the Republican executive committee in Portsmouth, went with him to the foreman, Smith, and he was employed. Does not say that he denied the above charge or made any promise, but in cross-examination, page 368, question 16, says he never heard any foreman or other person having authority in the navy-yard make any threats of discharging employés on account of their political sympathies.

The above are all the witnesses examined by Mr. Goode on mode of obtaining employment in navy-yard.

*Testimony of witnesses summoned by Mr. Platt on same subject.*

John C. Summers, page 152, question 1, direct examination resumed: I have heard men who claimed to be Republicans complain bitterly because, as they alleged, they were left out of the yard, and men whom they had reason to believe voted the Conservative ticket employed in place of them; and page 151, had never heard of any employé being discharged because he voted against Republican party.

George E. Crismond, page 141. Cross-examination by Mr. Goode:

Question 17. Obtained employment by going to Mr. Smith and asking for a job.

John Callahan, page 177. Cross-examination by Mr. Goode:

Question 34. I have never heard of one case where a man has been asked how he voted previous to getting work; myself as a foreman never asked it, and I never heard of any other, for I would consider it an outrage for any foreman to ask a poor man such a question.

Question 35. I employed men who were my old hands, and had one among the number who afterwards voted for Mr. Goode. When I am employing men I always give my old hands the preference.

Question 36. In his case it has not been necessary to obtain recommendation of Republican executive committee to obtain employment in yard.

John F. Dezendorf, page 185:

Question 12 I never had any understanding, express or implied, with any person recommended by me for work that they would vote the Republican ticket, and should have had no confidence in receiving the vote of any man worthy of being called a man by any such arrangement.

Question 13. I was chairman of city Republican committee of Norfolk for three years previous to September 23, 1874, and do not think that in all that time I ever asked a man applying to me for assistance how he voted or for whom he should vote in any political campaign.

Naval Constructor George R. Boush, page 466:

Question 6. Regulations concerning the mode and manner of employing men in the yard at present are essentially the same as before the war.

P. C. Asserson, civil engineer, page 469:

The commencement in September, 1874, of a new building, to be used as an iron-plating shop, necessitated the employment of about one hundred and twenty men more than were required for ordinary work of the department.

Question 5. There has never been at any time to my knowledge more men employed than was actually necessary.

And question 1, cross-examination: They were employed on the recommendation of the respective foremen under whom they came to me and by me recommended to the commandant of the yard for employment. I do not know who recommended them to the foreman. There may have been a few exceptions of a few men making direct application to me and whom I recommended.

George A. J. Griffin, chief clerk to commandant of navy-yard, page 470, question 2: I hand in statement taken from the register, which shows the number of men who actually made time during the several months referred to, which statement is as follows:

| | 1873. | 1874. |
|---|---|---|
| August | 1,189 | 611 |
| September | 1,017 | 814 |
| October | 1,318 | 1,347 |
| November | 1,129 | 918 |
| Total for four months, 1873 | 4,653 | 3,690 |
| 1874 | 3,690 | |
| Excess in favor of 1873 | 963 | |

Average excess in favor of 1873, 240 monthly.

Q. 3. Does this statement of figures mean that the number of men were employed the whole month, or that they made some time during the several months?—A. It is just the average time made; some days there would be double the number in that there was on other days; in consequence of bad weather there would sometimes be a suspension in some of the departments.

Q. 4. Do you keep the register you have referred to, and can you swear to the correctness of the statement you have given?—A. I do keep it, and I can swear to its correctness.

Patrick McDonough, page 487, foreman of bolt-drivers, question 6: I know every man personally who professes to be a ship-fastener in Portsmouth, Norfolk County, and Norfolk

city. When I require men I make requisition, by authority of the constructor, for number of men needed.

Q. 7. I generally employ them myself; sometimes the constructor himself employs others without consulting me.

Q. 8. My first aim is for qualifications—all things being equal, I of course give preference to Republicans.

Q. 4. Cross-examination by Mr. GOODE:

The Republican executive committee gave me list of men to be employed, but I reserved the right and exercised it generally as to their qualifications.

Q. 5. As general thing, I expected the men in my department to vote for Mr. Platt.

Q. 1. Direct examination resumed: No man was taken on in my department on promise, express or implied, that he would vote for Mr. Platt, beyond my knowledge of his politics, and I never asked but one man to vote for Mr. Platt and I don't know whether he did or not.

And the deposition of James H. Clements, commencing page 500.

The above comprises all the testimony as to the manner in which men obtained employment in the Norfolk navy-yard, and is all there is to sustain Mr. Goode's allegation that, immediately after his nomination for Congress, thirteen or fourteen hundred men were taken into the government navy-yard at Portsmouth; that they were employed directly through Mr. Platt's agency and that of his recognized committee-men; and that they could not obtain employment without a promise, expressed or implied. that they would vote for Mr. Platt.

*Testimony as to intimidation in Portsmouth.*

George E. Crismond, page 139, question 3: "I was assaulted on day of election because I was voting for Colonel Platt. He said, 'I am going to smack the damn radical.' When I remonstrated against assault, I was informed by a party of men called C. P. C. that I should not resent the attack. I was also told by different parties of C. P. C. that if I voted for Colonel Platt, and Colonel Goode should be elected I should never go in the yard again as they had me spotted."

Q. 5 and 6. C. P. C.'s is a Conservative political club. He is personally acquainted with most of them, having served with them in the Confederate army.

Stephen B. Kenney, page 146, question 10: Saw fighting going on at fourth-ward voting place on November 3. Election-day a number of men came down street from Portsmouth and mingled with crowd about precinct. Heard loud talk and angry words and saw fighting going on. I went to Mr. Moody, who had been attacked, and in pulling him away got a blow in my face from some party unknown; took Mr. Moody to a drug-store and dressed his wounds; a scalp wound in the back of head about two inches long. I saw other parties who were injured in the fracas.

Q. 11. All the wounded or injured that I saw were Republicans.

Q. 12 and 13. The assailants were said to be an organized club from Portsmouth called C. P. C.

Q. 15. Supposes C. P. C.'s were acting in the interests of the Conservative party.

John C. Summers, page 149, question 3: Was at voting-place, fourth ward, 3d of November, election-day.

Q. 5. Difficulty commenced between 12 and 1 o'clock. Saw number of men coming across open lot in rear adjacent to voting-place; among them men strangers to me, one of which approached me hurriedly, asked if I had tickets, and requested me to give him some, when he walked off five or ten paces and tore them up. Crowd in front of engine-house; two men fighting. When that fight was over the main body of the men moved round on the south side of house where fighting was going on. On my attempting to assist a man who was being beaten, I received blow on my left eye-bone and was seized by men with whom I had no acquaintance. Got clear of them and came in front of the house, and another fight was going on; it terminated in a few minutes; everything was then comparatively quiet. Moody and himself, Republicans, and one man a stranger to him, were wounded.

Barney Rutter, page 153: Was at voting-place, fourth ward, on day of election.

Q. 4. Was told between 8 and 9 o'clock in morning, by men not belonging to that ward, that they could or would drive me away from the polls, and one of them struck me on the head with a stick. There was no further disturbance till about 12 o'clock, then a crowd came up and commenced to fight. There was a man with Republican tickets knocked down; general row, lasting four or five minutes; most of Republicans got out of way.

Q. 5, 6, 7, 8. Names of men struck, John Moody, John C. Summers, John Callahan, Andrew Hopkins, David Culpepper, and himself, all Republicans, officiating around the polls with Republican tickets.

Q. 11. In fracas heard them sing out that "the Chambers were there."

Le Roy Peed, page 156: Was at voting-place in first ward on day of election.

Q. 4. Was beaten by C. P. C. about 3 o'clock in the afternoon; after being beaten was

ordered arrested by one of judges of election. Was one of the Republican vigilance committee.

E. B. Lookins, page 157: Was in voting place in first ward on day of election as a Republican ticket holder.

Q. 6, page 158: Was struck on back of head and knocked down by Henry Brown as I was entering door of first ward precinct; remained with judges until party had left, then went home to dinner. After dinner, in coming from Mr. Holliday's office, just across the street from voting place, was knocked down again; got up and run; they hallooed after me, "if I didn't leave they would give me more," and I left and went home from fear of being killed.

Q. 9. Men who attacked him at first ward were same that had been fighting at second and fourth ward precincts.

Willis Smith, page 492: Was struck while attending to his duty at the fourth ward polls, as member of Republican vigilance committee; saw Mr. Moody struck and heard him call for assistance.

Charles H. Sturtevant, page 492: Q. 7. Party of men came from Portsmouth about 12 o'clock and staid until 1 o'clock, during which time quite a disturbance took place. Mr. Henry Brown struck Mr. John Callahan, who was standing very quietly at the door, and made no resistance. Mr. Tip Dyson called me a damn son of a bitch, and dared me to come outside. About 1 o'clock they returned to Portsmouth, leaving the impression that they would return again in the afternoon, which, it seems, they attempted but failed.

Q. 8 and 9. The men committing these outrages were known to be Conservatives and supposed to belong to C. P. C's.

Page 294. There was no commotion or disturbance during election day, other than caused by this crowd of Conservatives of which I have spoken.

Robert M. Parker, page 494: The election, as far as I know, on that day, passed off quietly until about 12 o'clock, at fourth ward voting place, then two or three fights took place, by men whom I did not know. About that hour four or six men attacked me; one asking me for my Platt tickets, and at the same time catching all that were in my hand, endeavoring to tear them in two. I pulled away from him, leaving the number in my hand badly torn. At the same time I was endeavoring to clear myself of them I was hit and kicked by the number I have stated.

Q. 3. The word was to me, "Leave the polls;" the cry was frequently, "Drive them away;" this was said by the attacking party.

This testimony is uncontradicted, and shows conclusively that the only men intimidated and beaten in Portsmouth on the day of election were Republicans.

Testimony of Bain and Gooding alias Peeckham, witnesses examined by Mr. Goode:

Bain, page 233, question 5, testifies that he saw a man come to the polls with a Goode ticket, and saw E. B. Lookins strike him on the shoulder, take him away, and that he then returned with Lookins and voted a Platt ticket.

E. B. Lookins, page 496, question 3, testifies that there is not a particle of truth in the above statement.

Page 235, questions 23 to 25, Bain swears that he paid $3.26 unwillingly to his foreman, John Callahan, as an assessment in consequence of seeing a circular.

John Callahan, page 482, question 12, swears Bain never paid him a solitary cent, and absolutely disproves Bain's assertions in regard to compulsory assessments. (See Bain's examination from question 23 to question 33, pages 235, 236.) And, in rebuttal, John Callahan, from question 10, page 482, to question 19, page 483. Deposition of M. J. Rose, page 486, and J. H. Clements, question 10, pages 501 and 502.

E. P. Gooding, page 259, changed date and amount of old receipt for 1872—changed date from 1872 to 1874, making it come on Sunday, and amount from $2.50 to $4.50. (See testimony of William H. Lyons, page 463, question 4, and certificate itself, printed on page 265, E. P. G. 3, and original on file in committee-room.) Gooding was indicted by grand jury for perjury in this testimony, and is and has been ever since a fugitive from justice.

George W. Glover, page 266. His statements in regard to time and circumstances of his discharge from navy-yard disproved and contradicted by testimony of Anderson Gwin, sr., pages 478 and 479, and correction of same, page 499.

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## VIEWS OF THE MINORITY.

Mr. Blackburn submitted the following as the views of the minority:

The record in this case is voluminous, covering numerous issues made by the parties in the notice of contest and the answer thereto. Contestant claims that he is entitled to the seat as Representative from the second Congressional district of Virginia in the Forty-fourth Congress, having received a majority of 654 of the legal and qualified votes cast at the election held on the 3d day of November, 1874.

Whole number of votes as reported by the board of State canvassers: Goode, 13,521; Platt, 13,390; to which, contestant claims, there should be added the vote of Prince George County, which was rejected by the board of State canvassers, viz: for Goode, 562; for Platt, 987; also 206 votes cast for contestant in the county of Nansemond and 33 votes in the city of Norfolk, which votes were rejected, because the same were not cast in accordance with law, in that the 206 ballots rejected in Nansemond County had printed upon them the words "Against the amendments to the constitution." Twelve of the ballots cast in the city of Norfolk and rejected by the judges of election were found in the box set apart for the reception of ballots for or against the constitutional amendments, instead of the Congressional box. That at the colored precinct of the fourth ward of Norfolk 16 voters were unlawfully prevented from voting for contestant, as were 5 other voters at the colored precinct in the second ward.

Contestant further claims that the entire vote of York County should be excluded because of the candidacy of one Robert Norton, a colored Republican, whose candidacy, it is alleged, was advised and encouraged by contestee or his friends, and tended to deprive contestant of votes that he would otherwise have received. In the county of York Mr. Goode received 505, Mr. Platt 384 votes. If these claims of contestant be maintained, his majority in the district would be as above stated, 654. Taking them up in the inverse order of their presentation, we are of the opinion—

First. That there is nothing to be deduced from the testimony that will warrant the rejection of the York County vote; nor can such claim be supported except upon the denial to a large portion of the colored element of that county of their right to choose between a white and a colored member of their party in the bestowal of their suffrages. We hold that the vote of York County cannot be rejected.

Second. The testimony fails to support the charge that 16 voters at the colored precinct in the fourth ward, or 5 voters at the colored precinct in the second ward, of Norfolk, were unlawfully prevented from voting for contestant, and such votes should not be counted. As to the 12 ballots bearing the name of contestant, but not found in the box set apart for Congressional ballots, but in another box kept for the ballots taken on the constitutional amendments, we are clearly of the opinion that they cannot be counted for contestant. Upon this point there can be no difference of opinion. In the case of Washburn *vs.* Ripley the House held that a ballot deposited in the wrong box was lost and could not be transferred or withdrawn, either by the person depositing the ballot or the officers of the election.

Third. As to the 206 votes cast for contestant in Nansemond County, and rejected by board of county commissioners, 193 of them had printed upon them the name of contestant and the words "Against constitutional amendments;" 13 of said ballots had each a second ballot folded within them, upon which were printed the words "Against constitutional amendments." Under the general election law of Virginia, and the act of assembly providing for the taking of the sense of the people upon the constitutional amendments submitted for their ratification, it is clear that such ballots were not cast as required by law. The county commissioners for Nansemond County, in our judgment, did not err in rejecting and refusing to count said ballots, which, under the law, they were not permitted to receive; but we do not feel that this committee or the House should be restricted to such a rigid observance of the technical requirements of the statute as will do violence to the equities

involved. We therefore feel disposed to go behind the action of the board of county commissioners of Nansemond County, and allow to contestant the 206 votes deducted from his count.

Fourth. The returns from the county of Prince George were fatally defective. The law required that the returns should be certified by the board of county commissioners and attested by the clerk under his official seal. Neither of these requirements was complied with. We are of opinion that the board of State canvassers acted properly in refusing to take notice of what purported to be the returns from said county of Prince George, as the law only required them, in fact only authorized them, to canvass such returns as might be found in the office of the secretary of the commonwealth, properly certified by the board of county commissioners, their determination reduced to writing, and attested by the clerks of the several counties with their official seal. It will not be necessary to determine whether said board of State canvassers erred in refusing to receive and canvass the amended returns from Prince George County. We, in the exercise of the power belonging to the House, of going behind the action of all boards, State or county, and even behind the returns of the election officers, are convinced that the returns from the precincts of Bland and Rives, in the county of Prince George, should be rejected. The statute of Virginia requires that one of the poll-books of election shall be put under cover and seal and sent to the county or corporation court clerk, together with the ballots, inclosed and sealed. There can be no question as to the mandatory character of this statute. Its object is to prevent fraud in tampering with the ballots or alteration of returns. In these two precincts the law in this regard was wholly ignored and violated. The rule laid down and supported by a number of adjudicated cases and applied in several instances by this House does not require that positive proof shall be adduced showing that the ballots have been tampered with. It is sufficient to show that opportunity for such tampering has been afforded. The burden of proving that this has not been done devolves upon the party insisting upon the count. We cannot but conclude, in the light of the testimony, under the application of the law, as stated, that the vote of Bland and Rives Townships, in the county of Prince George, should be rejected, the result of which is the same as would have been attained had the board of State canvassers received and canvassed the amended returns from Prince George County.

It appears from the record that a large number of votes were polled by employés of the navy-yard, and that said employés voted mainly at the third and fourth wards of the city of Portsmouth and at Hall's Corner precinct in Norfolk County. It appears that immediately prior to the election large numbers of men were employed in this navy-yard; that their employment was asked and secured generally by the executive committee of the Republican party, to which party contestant belonged; that such employment was secured upon condition that employés would vote the Republican ticket, upon which the name of contestant appeared; that tickets of contestant were furnished to such employés; that parties were detailed to watch them on the day of election, and *spot* such as failed to carry out their engagement; that assessments were imposed upon and collected from said employés for election purposes. In short, it is proven that the patronage of the government in the matter of the conduct of this navy-yard was employed and prostituted for the election of contestant. This testimony comes from employés of the navy-yard who accepted service upon the conditions stated and voted for Mr. Platt, one of whom fixes the number of votes thus

obtained at 567 in the city of Portsmouth. In the case of these employés the prerogative of the sovereign voter has not been exercised.

The freedom of the citizen in the exercise of his highest privilege has been abridged. Constraint and duress has been exercised, and bribery and corruption in its most repulsive, because most insidious, form has been applied. We nowhere find in the history of American politics a case in which the prostitution of executive patronage, to the accomplishment of partisan purposes, exceeds or even equals the manipulation of the voters in this great workshop of the government. That votes so obtained should not be counted, if not too plain a proposition to admit of argument, is clearly shown by the report recently made to this House by this committee in the case of Abbott *vs.* Frost.

Bribery at elections has always been held a crime at common law, punishable by indictment or information. Both the bribed and the briber incur the penalty prescribed. If a vote secured by bribery, in direct violation of the statute, is to be counted, then the very object of the law, which is that it shall not be so obtained, is defeated; and so said the supreme court of Wisconsin. In Rogers's Law of Elections, p. 221, it is held that if an agent bribe voters, with or without the knowledge and direction of his principal, it will void an election. Under English rule it has been held that a seat may be avoided because of bribery by agents, though without the knowledge of the sitting member. No express previous authority is necessary to constitute an agent in the matter of an election. Such agency is to be inferred from the circumstances arising out of the general features of the case, the conduct or relations of the parties, subsequent recognitions of the acts of the supposed agents, or the absence of any disavowal of such acts. In 3d Douglass, Election Cases, the doctrine that bribing voters, either by the agent or those managing an election for a certain candidate, is sufficient to render void his election, is most clearly recognized and established.

The testimony shows that just prior to this election in 1874 the force of this navy-yard was increased from 900 to 1,400 men; that such new employés were generally introduced by the executive committee of contestant's party; that it was generally understood that they would be expected to vote the Republican ticket. The giving and the acceptance of such employment upon the terms and conditions stated constitute bribery in law. The *onus* of proving that such persons did not carry out, in good faith, the agreement made rests upon the contestant. The presumption is that the voter complied with his obligation and executed his contract, by giving his vote as he had promised; and in the absence of proof to the contrary, that presumption becomes conclusive. The proof here shows that large numbers of these men were discharged from employment immediately after the election. The practices adopted in controlling the votes of the employés of this navy-yard cannot be too severely reprehended, nor can such action be countenanced or tolerated without an abandonment of all purpose to preserve the purity of the ballot or perpetuate the institutions of republican government. In vain will you seek to secure the one or preserve the other by inflicting the penalties of the law upon the obscure agent who gives the bribe, or the still more humble voter, who takes it to relieve the pressure of poverty, or, perhaps, the pangs of hunger, while you continue to count the purchased vote, and allow him in whose interest the law has been violated to become the beneficiary of the nefarious transaction and continue to hold a station to which he has not been elevated by the unbiased judgment of his fellows, but is rather indebted for his place to those foul practices that characterize the rotten-borough system—that foulest of all blots

that mar the history of English civilization. These bribed votes should not be counted. The record furnishes no method for their elimination. Their acceptance can only be avoided by applying the rule of law, so well known and of such general adoption that it need scarcely be repeated here, that when illegal or fraudulent votes have been proven, and the poll cannot be purged with reasonable certainty, the whole vote must be rejected. Such, we think, is the case in these three precincts, viz, third and fourth wards of Portsmouth, and Hall's Corner precinct, in Norfolk County. We are unable to discover any theory, consistent with the proofs in the record and the rules of law, as herein stated, by which contestant's claim to the seat can be established. Granting him all that he claims in his notice of contest, in his briefs filed and arguments made before the committee, except the rejection of the whole vote of York County, a proposition too unreasonable and absurd to admit of serious consideration, and the thirty-three votes from Norfolk, which cannot be contended for, counting the whole vote of Prince George County, inclusive of Bland and Rives Townships, and giving him the two hundred and six votes cast for him in Nansemond County contrary to law, and he would have a majority of five hundred votes; and this majority is overcome by rejecting the vote cast at the Court-House precinct and at Stony Creek precinct, in the county of Sussex; at Bruton Township precinct, in York County; at Jamestown precinct, in James City County, and at Guilford Township precinct, in the county of Surry, in each of which precincts a considerable number of persons were permitted to vote who had been illegally and improperly registered on the day of the election, and within the ten days next preceding the election, which was in direct contravention of the statute law of Virginia. At these precincts there was cast an aggregate vote of 1,173 for contestant, and 561 for contestee. Deduct this from the whole vote of the district, including all claimed by Mr. Platt in the counties of Prince George and Nansemond, and the result would be—

| | Goode. | Platt. |
|---|---|---|
| Whole number of votes | 14,083 | 14,583 |
| Deduct vote at precincts named | 561 | 1,173 |
| | 13,522 | 13,410 |
| | 13,410 | |
| Majority for Goode | 112 | |

Under the law of Virginia no man is a legal voter who has not been duly registered, and such registration must be had ten days before the election. The testimony shows that at all the precincts named persons were registered on the day of election, or within the ten days next preceding the election. There can be no doubt of the validity of a statute requiring the registration of voters. McCrary says (American Law of Elections, p. 12):

> It being conceded that the power to enact a registry-law is within the power to regulate the exercise of the elective franchise and preserve the purity of the ballot, it follows that an election held in disregard of the provisions of a registry-law must be held void.

This rule has been repeatedly applied by this House. See Howard *vs.* Cooper, Contested Election Cases, p. 275; also, Reed *vs.* Julian, p. 822; Myers *vs.* Moffitt, p. 564, and many others. It is not to be objected that the honest voter should not be disfranchised by reason of the mistakes or misconduct of election-officers. Every candidate has the right to bring forward and prove the legality of every vote cast at a precinct which has been a aled. Contestee's intention of impeaching the votes

cast at these precincts is clearly stated, and notice thereof given, in his answer to notice of contest. But it is not necessary to reject the vote of these precincts, or any of them, to demonstrate the absence of title in contestant. We prefer to rest this case upon the broadest equities, and submit the following as the grounds of our conclusions.

The votes of the navy-yard employés should not be counted. This necesitates the rejection of the vote at the third and fourth wards in Portsmouth, and the Hall's Corner precinct in Norfolk County, these being the precincts at which said navy-yard employés mainly voted, as shown by the testimony. That said votes were given under duress and influenced by shameless bribery and intimidation is too clearly proven in the record to admit of controversion. The proof shows that just prior to the election some 1,400 men were employed in the navy-yard; that a large number of them were discharged soon after the election; that this force was not needed to do the work in the yard; that very many of them were unskilled, incompetent, and worthless; that their employment was obtained directly through the agency of Mr. Platt and his executive committee men; that they accepted the employment upon condition or with the understanding that they would vote for the contestant; that contestant's tickets were given them on the day of election by navy-yard employés, and that they were closely watched while depositing the same in the ballot-box. The testimony does show that some of the employés in the yard were supporters of the conservative party, but this must have represented a small portion of the force. Assuming that one-half of the force thus employed carried out their contract and voted for contestant according to the conditions of their employment, and we have 700 illegal, fraudulent votes with which to offset his assumed majority of 500, conceding to him all that he claims in Prince George and Nansemond Counties. One of contestant's own witnesses, George E. Crismond, testifies (p. 143 of the record) that, according to his estimate, contestant received in the city of Portsmouth alone 567 votes from white men employed in the navy-yard, and that, exclusive of the navy-yard vote, there were not more than 25 or 30 white Republicans in Portsmouth. But it appears that some of these employés voted in Norfolk City, the benefit of whose illegal ballots the contestant must, of necessity, receive. Rejecting these three precincts, and purging the polls at other precincts in the district where it is clearly proven that illegal votes were received and counted, we find that the assumed majority for contestant is overcome. At the 3d and 4th precincts of Portsmouth and Hall's Corner precinct, in Norfolk County, Mr. Platt received 1,030 votes, Mr. Goode receiving 589. Deducting this vote from the entire vote of the district, the result would be:

Whole vote of district, allowing Mr. Platt all that he claims in Prince George and Nansemond Counties:

| | |
|---|---|
| For Platt | 13,553 |
| For Goode | 13,494 |
| Majority for Mr. Platt | 59 |

This apparent and assumed majority is overcome by purging the polls of other precincts of the illegal votes cast thereat. At Sussex Court-House Township precinct there were 13 illegal votes cast—8 white and 5 colored. At Stony Creek Township there were 18 illegal votes cast—2 white and 16 colored. At Jamestown Township, in James City County, there were 16 illegal votes cast—1 white and 15 colored. At Guilford Township precinct, in Surry County, there were about 20 illegal votes

cast, principally colored. At Nelson Township precinct, in York County, there were 15 illegal votes cast—2 white and 13 colored. At Bruton Township precinct, in York County, there were 2 illegal votes cast. At Rives Township, in Prince George County, there was 1 illegal vote cast —colored. At Bland Township, in Prince George County, there was 1 illegal vote cast—colored, exclusive of those voting at Bland and Rives precincts, brought from other precincts and other counties, of which several are proven in the record. At Blackwater Township, in Prince George County, there was 1 illegal vote cast—colored. At Sherman's Cross-Roads precinct, in Prince George County, there was 1 illegal vote cast—colored. At Brandon Township precinct, in Prince George County, there was 1 illegal vote cast—colored. At Suffolk precinct, in Nansemond County, there were 2 illegal votes cast, both colored—making an aggregate, at all the precincts named, of 90 illegal votes. What is to be done with these illegal and fraudulent votes?

The rule in certain cases is to divide the fraudulent or illegal votes between the candidates in proportion to the whole vote received by each; but on page 225, American Law of Elections, it is held:

> Let it be understood that we are here referring to a case where it is found to be impossible, by the use of due diligence, to show for whom the illegal votes were cast. If in any given case it be shown that the proof was within the reach of the party whose duty it was to produce it, and that he neglected to produce it, then he may well be held answerable for his neglect, and because it was his duty to show for whom the illegal votes were cast, and because he might, by the use of reasonable diligence, have made this showing, it may very properly be said that he should himself suffer the loss occasioned by deducting them from his own vote.

We see no reason why this fair and well-established rule should not be applied in this case. Contestant had the opportunity to make this proof, and failed to do so or to attempt it. The eighty days allowed both contestant and contestee for taking testimony-in-chief had expired before these illegal and fraudulent votes were discovered to be upon the several polls; but, after such discovery, contestant then had by law ten days in which to take testimony in rebuttal. These polls and the legality of the votes cast thereat having been put in issue by the answer of contestee, such testimony might have been competent; at any rate, the contestant might have relieved himself of the burden of proof imposed by the law by an effort in these remaining ten days of his time to show for whom these illegal votes were given.

It clearly appears from the record that, should this rule be not applied, but these illegal votes deducted from both candidates in proportion to the whole number of votes received by each at the several polls, the majority of contestee would be still further increased beyond the final summary hereafter given; but as such action would not change or affect the final result of the contest, we do not deem it necessary to state the exact number to be taken from each.

Waiving the question of illegal voting by reason of fraudulent or unlawful registration, we submit, by way of summary:

| | Goode. | Platt. |
|---|---|---|
| Whole vote of district | 13,521 | 13,390 |
| Add vote of Prince George County (excluding Rives and Bland Townships, rejected) | 369 | 386 |
| Add Nansemond vote | ..... | 206 |
| | 13,890 | 13,982 |
| | | 13,890 |
| Majority for Mr. Platt | | 92 |

Rejecting vote at third and fourth wards, Portsmouth, and at Hall's Corner precinct, in Norfolk County, in which three precincts Mr. Platt received 1,030 votes, and Mr. Goode received 589 votes, and we have as final result:

| | Goode. | Platt. |
|---|---|---|
| Whole vote | 13,890 | 13,982 |
| Deduct for three precincts named | 589 | 1,030 |
| | 13,301 | 12,952 |
| | 12,952 | |
| Majority for Mr. Goode | 349 | |

As to the precincts of Bland and Rives, in the county of Prince George, there can be no doubt as to the justice of their rejection, unless it be contended that the statute of Virginia requiring one of the poll-books to be put under cover and seal and the ballots to be inclosed and sealed is simply directory and not mandatory. We cannot so regard the law. The testimony conclusively shows that in both regards the law was openly violated. The testimony further shows that several illegal votes were received and counted at these two polls.

We therefore recommend the adoption of the following resolution:

*Resolved*, That John Goode, jr., was elected and is entitled to the seat which he now holds in the House of Representatives in the Forty-fourth Congress from the second Congressional district of Virginia.

JO. C. S. BLACKBURN.
R. A. DEBOLT.
E. F. POPPLETON.
GEO. M. BEEBE.
JOHN T. HARRIS.

I reserve the right to non-concur in some details in above report.

JOHN T. HARRIS.

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## BUTTZ vs. MACKEY.—SECOND CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Charges of fraud, bribery, intimidation, and violence.

The committee find that there is not any system of registration in the State, and the voters are permitted to vote at any voting precinct in the county, so that every facility is furnished for fraud, and even where the, election officers are honest great frauds may be readily committed without there being any practical means of detecting them. It is indispensable to a fair election that the electors shall be required to vote in the precinct where they reside.

The committee recommend that neither Buttz nor Mackey was lawfully elected or entitled to a seat.

The House adopted the report July 19, 1876.

July 13, 1876.—Mr. Thompson, from the Committee on Elections, submitted the following report:

*The Committee on Elections, to whom was referred the case of C. W. Buttz, claiming to be admitted to the seat from the second Congressional district of South Carolina, respectfully report:*

The second Congressional district of South Carolina is composed of the counties of Charleston, Orangeburg, Clarendon, and Lexington. The returns of the commissioners of election give the contestant 14,204

votes and the contestee 16,746; scattering, 15; making a majority for the contestee of 2,537. The city of Charleston gave 10,404 votes, 7,976 of which were for the contestee, and 2,428 for the contestant, making a majority for the contestee of 5,548. The contestant alleges in his notice of contest that frauds were committed in most of the voting precincts of the city of Charleston, and at the hearing before the committee he, without objection, introduced evidence that frauds were committed in all of the voting precincts of that city by the partisans of the contestee, through an organized system of repeating, and that persons entitled to vote and desiring to vote for the contestant were prevented from voting for him by violence and threats, and induced to vote for the contestee; also, that a large number of persons, through bribery, were induced to vote for the contestee, and that this was done with the approval of the managers of the election. The contestee denies all the material allegations of the contestant, and alleges that many of the allegations are irrelevant and immaterial. Although there are allegations of irregularities at other precincts than those in the city of Charleston, your committee have not thought it necessary to consider them, as the decision they have arrived at with reference to the vote of the city of Charleston is conclusive of this case. The contestee claims that all the evidence taken by the contestant after the 18th of February, 1875, should be stricken out, as the forty days from the time of the serving of the answer of the contestee expired on that day. It appears that both parties proceeded in ignorance of the act of 1873 concerning contested elections, and the contestant gave notice and took evidence under the law as it existed prior to that date. And your committee are of opinion, as both parties proceeded under a mutual misapprehension of the law, that neither ought to take any advantage of the other on that account, but that the evidence must be regarded as having been taken by mutual consent, waiving the provisions of law, and that this rule will apply until one party or the other declined to proceed under this arrangement. It appears that no objection was made to this mode of proceeding until March 1, 1875, during the taking of the evidence of one Henry P. Dart, who appears to have been the first witness examined on that day. Your committee have, therefore, not considered any of the evidence taken subsequent to that of Dart's. (P. 47.) The contestee, although having full opportunity to take evidence, declined to take any evidence; and your committee are compelled to pass upon this case upon the evidence of the contestant alone.

The evidence clearly shows that most gross frauds were perpetrated at the voting-precincts in the city of Charleston, through repeating, bribery, intimidation, and violence, and that the same were carried on under such circumstances as to satisfy the committee that they must have been done with the knowledge and assent of the officers of the election. To show more clearly the character of the election, your committee insert the evidence given by some of the witnesses:

*Deposition of H. Raferty.*

Page 9:

HOGAN RAFERTY, a witness of legal age, produced by contestant upon due notice to the contestee, deposes as follows in reference to questions propounded by the contestant:

Question. Where do you reside?—Answer. I reside in the city of Charleston.

Q. How long have you been a resident of Charleston?—A. For the last ten months. I am a native of Ireland.

Q. Were you present in the city of Charleston at the election held on the 3d of November last, at which a member of Congress was voted for; and, if so, did you vote at said elec-

ion?—A. I was present and visited the various polls in the city of Charleston on that day, but did not vote myself, as I am not a citizen of the United States.

Q. Did you take any part in said election; and, if so, how and in what way?—A. I did take part so far as working was concerned at that election. About 8 o'clock in the morning of the election I met Richard Murphy at the corner of Church and Broad streets, and was requested by Murphy to vote the independent Republican ticket, which I declined to do, as I was not entitled to a vote. After some further conversation Murphy said he would give me $10 for a day's work as a rallier, which I accepted. Murphy then informed me that he had a crowd of men whom he wished me to take charge of, and visit the different polling-precincts, and see that they all voted at each place. I went with him then to the city hall, first precinct, ward 1. I there met twenty-five men, mostly sailors, each of whom had a green badge tied in the button-hole of the left lappel of their coats with a black ribbon. Murphy voted all these men at the city-hall precinct and turned them over to me. It was understood that they were to follow me from place to place, Murphy having furnished me with a printed list of the different precincts in the city. He said everything was all right, as they had a majority of the managers at each precinct in their interest, and that the police understood it and would not interfere. I took the twenty-five men and went first to the Market-hall precinct, ward 3, where they all voted. We next went to the first precinct, ward 1, the men scattering, some on one side and some on the other side of the street, to avoid being noticed, and there the whole twenty-five voted. We next went to the second precinct, ward 4, where they all voted; then to the third precinct, in ward 4, and they all voted there; then to first precinct, ward 5, and again voted; then to the second precinct, ward 5, where six of the twenty-five men voted, the balance having refused to vote because two or three had been challenged, one of whom was arrested by a supervisor, who gave him in charge of a policeman, who released him as soon as out of sight of the supervisor. I then got them together again and went to first precinct, ward 6, where they all voted. Then I took them to second precinct, ward 6, and voted all of them there; then to second precinct, ward 6, and there they all voted; then to first precinct, ward 7, and there they all voted; then to first precinct, ward 8, and there they all voted. I then took them all to second precinct, ward 2, and there they each one voted; then to first precinct, ward 2, where they all voted. I then left the men in front of the court-house, several of whom were talking with Harry May, a partner of Murphy's in this business. I went to Murphy's headquarters on East Bay, and reported the number of times the men had voted. I then made arrangements with Murphy to return at 2 o'clock in the afternoon, and take the same gang of twenty-five men and go the same rounds of the different precincts that I had been to in the forenoon, which I agreed to do for $10 more.

Q. Did you go to Murphy in the afternoon as agreed upon?—A. Yes; I went back; but two of the men had got too drunk to walk, and two other men were substituted in their place. The most of the men having been furnished with a different suit of clothes, we started out and voted them all at each of the precincts that they had voted at in the forenoon, except the second precinct in ward 5, which we avoided because of the challenges at that precinct in the forenoon. About half past 5 in the afternoon I returned to the city-hall precinct, where I met Murphy and May, who took charge of the party, and marched them into Church street, at second precinct, ward 1, where they all voted just before the polls closed. At this precinct Murphy said that they had got the only manager opposed to them drunk, and that they could do as they pleased there.

Q. What ticket did these men vote at these different precincts which you have mentioned, and whose name was on it for Representative to the Congress of the United States?—A. They all voted what was known as the Green or Independent Republican ticket, with E. W. M. Mackey's name on it for Representative to Congress.

Q. From whom did these men receive the tickets they voted?—A. From me, as I kept account of the number of votes they each one cast, because they were to be paid.

Q. Did they all vote under the same name at each place?—A. No; it was understood that they were to give different names, each one giving any name he could think of.

Q. Were any of these men residents of the city or county of Charleston?—A. I think they were not, the larger portion of them being sailors, and some of them being from Savannah, Ga., as I repeatedly heard them speaking about returning home.

Cross-examined by counsel for contestee:

Q. Could not these men have been residents of the city of Charleston without your knowing it?—A. Some of them may have been; but I understood from Murphy that they were mostly sailors from different ships then lying in Charleston Harbor.

Q. How do you know that they voted for E. W. M. Mackey for Congress?—A. Because his name was on each ticket I gave them.

Q. How do you know that they put the ticket in the box which you say you gave them?—A. I saw each deposit his ticket in the box, and know it was the one that I gave him.

Q. Did you not know that you were violating the law in going around and voting these men so often?—A. No; Murphy said that if I did not vote myself the law would not reach me.

H. RAFERTY.

Page 20:

WILLIAM FOSTER, a witness of lawful age, produced by the contestant upon due notice to contestee, deposes as follows in reference to questions propounded by contestant:

Question. What is your age, and where do you reside?—Answer. I am twenty-four years of age, and my home is at Fall River, Mass.

Q. Where were you on the 3d of November, 1874, the day of election for State officers and Representative to Congress?—A. In the city of Charleston.

Q. How long before the 3d day of November, A. D. 1874, had you been in this city and State?—A. About one week.

Q. Did you vote in the city of Charleston for a member of Congress at that election; and, if so, what induced you to do so?—A. Yes; I voted for member of Congress, along with several others, under the following circumstances: I was out of employment, and without money, and among strangers; I went the night previous to the said election to the guard-house for lodging; I met eight or nine others there in the same situation; on the next morning a man named Harry May, who was connected with the police force as a detective, informed us that we were about to be discharged, and gave us the ticket known as the Green or Independent Republican ticket to vote, stating that if we should vote it we should receive a good breakfast and $1 in money for each time we voted it; we were taken to the court-house, precinct 1, ward 2, where five of the party voted; I did not vote at the time, because I neither received my breakfast nor the $1; I with three others then returned to the station-house for breakfast and money before we voted; we were taken to the sailor boarding-house of Richard Murphy, who required us to vote twice each before he would give us our breakfast, once at the city hall, first precinct, ward 1, and upon voting there Murphy gave us $1 each, and he then conducted us to second precinct, same ward, at which place we all voted again; Murphy then took us to his house and gave us our breakfast; after breakfast we started out and met Harry May; Murphy and May talked a short while together, when May turned around and said to us to follow him, which we did; May took us to first precinct, ward 3, and there we voted again, for which vote he paid us another dollar each.

Q. Did Murphy inform you that you would have no difficulty about voting?—A. Yes; he told us that we could vote as often as we liked.

Q. Did Murphy and May know that you had no right to vote?—A. Yes; they knew that we had no right to vote, as we had been here but a short time, and that we voted many times.

Q. Where have you been since that election?—A. In the city jail of Charleston, under sentence of United States court for three months for illegal voting on that day.

Q. Were you tried in the United States court for that offense?—A. After being indicted I plead guilty, and was sentenced by the judge.

Q. Did you ever deny voting illegally on that day?—A. No; but I was sorry to have done so, and would not have done so, but was compelled by necessity and want to do so.

Q. When were you discharged from the jail?—A. On the 13th of February, A. D. 1875.

Q. Whose name was printed on the ticket that you and the others voted, which you said was the Independent Republican ticket, for Congress?—A. The name of E. W. M. Mackey.

Cross-examined by counsel for contestee:

Q. Can you read?—A. I can.

Q. Did you read the tickets before you voted?—A. Yes, sir; I did.

Q. Was the name of E. W. M. Mackey on them for Congress?—A. Yes: it was.

Q. Were you acquainted with those men with whom you voted?—A. I knew two or three of them.

Q. Did you not know you had no right to vote?—A. I knew nothing about the laws of this State.

Page 24:

ISAAC B. RIVERS, a witness of lawful age, produced by the contestant upon due notice to the contestee, deposes as follows in reference to questions propounded to him by contestant:

Question. How old are you, and where do you live?—Answer. I am twenty-eight years of age, and reside in the city of Charleston.

Q. Where were you on the 3d of November, 1874, during the election for State officers and member of Congress?—A. I was in the city of Charleston, and participated in said election.

Q. Did you observe any illegal voting on that day? And, if so, state all you know in regard to it.—A. I did. On the day of election I had charge of a wagon with six men, who voted first at precinct No. 8, ward 3; next at precinct 1, ward 4, they voted again; next at Washington engine-house, ward 6, they voted; next at Stonewall engine-house, second pre-

cinct, ward 4, they voted; next at Marion engine-house precinct, ward 6, they voted, and then the six men, with myself, went to lunch, which was paid for by Maj. E. Willis.

Q. Did each of the six men you mentioned vote at each of the different precincts aforesaid?—A. They did; each and every one of them.

Q. What did you do after lunch?—A. Maj. E. Willis furnished a carriage, in which myself and three men went first to engine-house, second precinct, ward 3, where they voted; next I took them to Hope engine-house, first precinct, ward 4, where they voted again; then to Washington engine-house, first precinct, ward 6, where they voted again; afterward to Stonewall engine-house, second precinct, ward 4, where they voted again; next I took them to Marion engine-house precinct, ward 6, and there they voted again; then to Market-hall, first precinct, ward 3, and again they voted. I had in my charge a carriage that the three men aforesaid went around to the six precincts just mentioned in, three times each.

Q. Did each of the three men vote at each precinct you mentioned on the three different occasions?—A. They did; every time.

Q. Do you mean to say that the three men that you had in the carriage that afternoon voted fifty-four votes?—A. Yes: they did.

Q. Whom did they vote for for Congress?—A. For E. W. M. Mackey.

Q. Whom did the six you had charge of in the forenoon vote for for Congress?—A. For E. W. M. Mackey.

Q. Who put you in charge, or from whom did you receive the carriage?—A. From Maj. E. Willis.

Q. Do you know what party Maj. E. Willis was supporting at that election?—A. The party known as the independent Republican party.

## Page 33:

A. W. GURNEY, a witness of lawful age, produced by the contestant upon due notice to the contestee, deposes as follows in reference to questions propounded to him by the contestant:

Question. What is your age, and where do you live?—Answer. I am thirty-two years of age, and live in the city of Charleston.

Q. Where were you on the 3d of November last, 1874, during the general election?—A. I was a United States supervisor of election, and was on duty that at first precinct, ward 4.

Q. Did you observe any illegal voting that day? And, if so, state it.—A. I did. A great many fraudulent votes were polled at my precinct that day. The frauds were perpetrated by a general system of repeating, and by bribery and purchasing of votes, which it was impossible for me to stop or prevent, as two of the managers of election were willing to and did receive the votes of any person who offered to vote what was known as the Independent Republican ticket, upon which the name of E. W. M. Mackey appeared for Congress. That, in addition to the repeating, open bribery was practiced, and constant complaint was made to me, as a United States supervisor, that votes were being bought by the Mackey party. I made an effort to stop the bribery and repeating by ordering the arrest of a number of parties, and especially one Eugene Walter, who was present at the poll nearly all day influencing, by means of bribery, votes in behalf of the Independent Republican or Mackey ticket. I directed the deputy United States marshal to arrest the said Walter and take him before the United States commissioner, but the said Walter, with a large crowd around him, resisted and defied arrest, and it was impossible for the deputy United States marshal to execute my orders. I firmly believe that if a determined effort had been made to stop the bribery and repeating that blood would have been shed, and that I would have lost my life.

Q. Was it possible, when the polls were closed on that day, to ascertain how many legal votes were cast at that precinct?—A. No, it was not possible to tell how many legal votes were cast, nor for whom they were cast. The managers at that precinct, I mean two of them, allowed persons to vote twice under the same name, and when I challenged parties for having voted at that precinct before under the same name I was overruled and the persons allowed to vote. The third manager was of no service, because the other two managers were Mackey's partisans, and overruled him every time.

Q. In whose interest were these illegal votes cast for Congress?—A. In the interest of E. W. M. Mackey.

## Page 36:

JOHN BONUM, a witness of lawful age, produced by the contestant upon due notice to the contestee, deposes as follows in answer to questions propounded by contestant:

Question. How old are you, and where do you live?—Answer. I am fifty-five years of age, and live in the city of Charleston.

Q. Where were you on election-day, the 3d day of November, 1874, and what were you doing on that day?—A. I was in the city of Charleston on that day, and was doing duty as United States deputy marshal.

Q. Did you notice any illegal voting, bribery, or purchasing of votes or intimidation on

that day?—A. Yes, I did. At the first precinct of ward 4, and at other voting-precincts, I saw voters repeat their votes often, just as long as they voted the independent Republican ticket, and at the same precinct and the second precinct in ward 4 open bribery was practiced to obtain votes for the same ticket. All objections and challenges were overruled by a majority of the managers of election, who were partisans of that ticket. At one time, at the first precinct in ward 4, United States Supervisor Gurney called upon me to arrest one Eugene Walter for buying votes, and it was impossible for me to do so, because the crowd surrounded me, defied arrest, and, cheering for Green and Mackey, threatened violence with such terrible menaces that I found it useless to further attempt the arrest of the said Walter unless I had a large force of men to assist me. I saw wagons and carriages full of men brought to the first precinct, ward 4, and vote the Green-Mackey ticket, and during the day, while I was visiting other polls, I saw the same wagons and carriages arriving, voting the men who came in them, and leaving; for nearly every vehicle of any kind was employed by the Green-Mackey party to carry their repeaters from poll to poll and vote them, as I know this positively, having followed them until I became so tired and fatigued that I could follow them no longer. I am fifty-five years in this city, and have never seen such bribery, open purchasing of votes, and repeating of votes, at any general or municipal election, in my life. I was eye-witness to several parties, unknown to me by name, being forced by intimidation to vote the Green-Mackey ticket, when they wanted to vote the regular Republican ticket. I was compelled to be a silent eye-witness to all this corruption, for fear of my life, if I should interfere.

Q. What is your occupation now?—A. I am one of the deputy sheriffs for this county.

JOHN BONUM.

Page 44:

W. H. THOMPSON, a witness of lawful age, produced by contestant upon due notice to contestee, deposes as follows in answer to questions propounded by contestant:

Question. How old are you, and where do you live?—Answer. I am forty-one years of age, and live in the city of Charleston.

Q. Where were you on election day, the 3d day of November, 1874?—A. I was in the city of Charleston, and went from poll to poll, in my buggy, during the entire day.

Q. Did you see any illegal voting going on, any bribery, or any purchasing of votes on that day?—A. Yes, I did. Being in my buggy, I had a very good opportunity to see what was going on at the different polls in the city, and at first precinct, ward 1, I saw that the crowd of Green-Mackey bullies governed that precinct, and used every means of intimidation to prevent any one from voting the regular Republican ticket, as well as made use of every means and way of bribery and corruption to get voters to vote the independent Republican ticket; and not only voters, but to get those who were not entitled to vote to go up and cast a vote. I then went to the second precinct, ward 1, and saw P. Dolan, one of the managers of election of that precinct, so drunk that he was unable to do his duty as a manager, while the other two managers, who were partisans of the Green-Mackey party, were perfectly sober, and allowing every one, whether native or foreign, to vote, so long as he voted the independent Republican ticket. I saw there Richard Murphy with a crowd of men altogether strangers to me, and who appeared from their looks to be mostly sailors. I then went to the Market-street hall, first precinct, ward 3, where I saw, after being there a short time, the same Murphy with the same men, who all voted. I followed them to the Hope engine-house, first precinct, ward 4, where they all voted again, after which I lost sight of them. I took particular notice the last time to see what ticket they voted, which was the Green-Mackey ticket. At that precinct I heard violent threats used by the Mackey men, that they would carry that election at all hazards, or that there would be bloodshed. So violent were threats and menaces of the Green-Mackey men, that I thought it was much better to be a quiet looker-on than to attempt to interfere at the risk of my life. I then went to the Stonewall engine-house, and there I saw Maj. E. Willis paying out money to parties who would come and vote, and which he did openly, making it no secret that he was buying votes for the Green-Mackey ticket. I then went to the different precincts in wards 5, 6, 7, and 8, and at each of them I saw money freely paid by the partisans of the Green-Mackey ticket. At first precinct, ward 8, the Union Republicans were so intimidated that some were driven from the polls without voting. At that precinct one of the managers of election, who was a regular Republican, was threatened several times with bodily harm if he would interfere with parties, who were entire strangers, who went and voted there. I met Isaac B. Rivers, at different times during the day, going from poll to poll with a carriage full of men.

W. H. THOMPSON.

The whole evidence, of which the above is a fair specimen, clearly shows the character of the election in the city of Charleston, and must, we think, satisfy the House that such an election ought not to be sanctioned or tolerated. To allow the returns from such voting precincts to be canvassed is to encourage fraud and corruption, and your committee

have unanimously come to the conclusion that the whole vote of the city of Charleston must be rejected, as fraud was committed by, or assented to by, the managers of the election as well as by other parties, and it is impossible to ascertain how many legal votes were cast. Your committee have had not a little difficulty in determining what ought to be done under the circumstances of the case. The district outside of the city of Charleston gives a large majority for the contestant. Still, we are of opinion that he ought not to be declared elected, as it is impossible to determine who received a majority of the legal votes of the district. And the votes of so large a proportion of the district have been rejected and the people thereby disfranchised that justice to the district requires that a new election shall be had, and an opportunity given the legal voters to hold an election to determine who shall represent the district. Your committee cannot close their report without alluding to the imperfect system adopted by the State of South Carolina to secure a fair election. There is not any system of registration in the State, and the voters are permitted to vote at any voting-precinct in the county, so that every facility is furnished for repeating; and even where the election-officers are honest, great frauds may be readily committed without there being any practical means of detecting them. The facilities are so great for repeating that it is hardly to be expected in times of high political excitement that a fair election will be held. It is indispensable to a fair election that the electors shall be required to vote in the precinct where they reside. Had such a check existed, it is safe to say that the frauds perpetrated would not have been attempted, much less committed.

The committee recommend the passage of the following resolution:

*Resolved*, That neither C. W. Buttz nor E. W. M. Mackey was lawfully elected to the Forty-fourth Congress from the second Congressional district of South Carolina, nor is either of them entitled to a seat in said Congress.

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